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Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

v.

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the State of Louisiana can constitutionally impose a severance tax on oil and gas extracted from Barksdale Air Force Base lands notwithstanding this Court's ruling in *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369 (1964), that Barksdale is a federal enclave subject to the exclusive legislative jurisdiction of the United States under Article I, Section 8, Clause 17 of the Constitution of the United States.

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT

Petitioners:

1. Mississippi River Transmission Corporation. Mississippi River Transmission Corporation is now the wholly-owned subsidiary of NorAm Energy Corp., and during the pendency of the proceedings below was the parent of MRT Exploration Company. MRT Exploration Company sold all of its interest in the leases in question, including all of its rights in and obligations arising pursuant to these proceedings, to Mississippi River Transmission Corporation; thereafter MRT Exploration Company was sold.

2. Murphy Exploration and Production Company. Murphy Exploration and Production Company is a wholly-owned subsidiary of Murphy Oil Corporation. During the pendency of the proceedings below Murphy Oil Corporation transferred all its interest in the leases in question, including all of its rights in and obligations arising pursuant to these proceedings, to its wholly-owned subsidiary, Murphy Oil USA, Inc., which was merged into Murphy Exploration and Production Company, also a wholly-owned subsidiary of Murphy Oil Corporation.

3. Pennzoil Exploration and Production Company. During the pendency of the proceedings below, all of the assets, rights, duties and obligations of Pennzoil Producing Company were merged into its parent company Pennzoil Company. Thereafter Pennzoil Company assigned

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT – Continued

all of these same assets, rights, duties and obligations to its wholly-owned subsidiary Pennzoil Exploration and Production Company.

4. TOTAL MINATOME CORPORATION. Texas Gas Exploration Corporation, an original petitioner in these proceedings, after a name change was merged into TOTAL MINATOME CORPORATION. TOTAL is a corporation incorporated under the laws of France which has the wholly-owned subsidiary TOTAL America, Inc., a Delaware corporation, which has the wholly-owned subsidiary TOTAL American Holding, Inc., of which TOTAL MINATOME CORPORATION is a wholly-owned subsidiary.

5. NorAm Energy Corp. During the pendency of the proceedings below, Arkla, Inc., an original petitioner, changed its name to NorAm Energy Corp. NorAm Energy Corp. does not have any subsidiaries which are not wholly-owned.

6. Rosewood Resources, Inc. Rosewood Resources, Inc. is the wholly-owned subsidiary of The Rosewood Corporation.

Respondent:

Respondent is the Secretary of the Louisiana Department of Revenue and Taxation and is charged by statute with administering the severance taxes imposed under Louisiana law.

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No. 95-___

In The

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October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

v.

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

Mississippi River Transmission Corporation, Murphy Exploration and Production Company, Pennzoil Exploration and Production Company, TOTAL MINATOME CORPORATION, NorAm Energy Corp. and Rosewood Resources, Inc. (herein "Petitioners") respectfully pray that a Writ of Certiorari issue to review the decision of the Louisiana Court of Appeal, First Circuit (writ denied by the Supreme Court of Louisiana), entered in this case affirming the judgment of the 19th Judicial District Court of Louisiana in and for the Parish of East Baton Rouge.

OPINIONS BELOW

The opinion of the Louisiana Court of Appeal, First Circuit, is reported at *MRT Exploration Company v. McNamara*, 648 So.2d 1108 (Appendix A, p. 1a), and the denial by the Louisiana Supreme Court of Petitioners' application for a writ of certiorari is reported at *MRT Exploration Company v. McNamara*, 654 So.2d 1083 (Appendix B, p. 17a). The Louisiana district court's opinions are attached as Appendix C (its Written Reasons for Judgment, p. 19a) and Appendix D (its Supplemental Written Reasons for Judgment, p. 26a), and its Judgment is attached as Appendix E (p. 28a).

JURISDICTION

The Louisiana Court of Appeal, First Circuit, issued its opinion on December 29, 1994 (Appendix A, p. 1a). On May 19, 1995, the Louisiana Supreme Court denied Petitioners' application for a writ of certiorari that raised the question presented to this Court (Appendix B, p. 17a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Constitutional Provisions

United States Constitution, Article I, Section 8, Clause 17 provides:

> The Congress shall have power [t]o exercise exclusive Legislation in All Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the

Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

United States Constitution Article VI, Clause 2 provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Constitution of the State of Louisiana of 1921, Article X, Sections 1 and 21.

Constitution of the State of Louisiana of 1974, Article VII, Section 4.

Federal Statutory Provisions

Buck Act, Pub. L. No. 819, 54 Stat. 1059 (1940) (codified as amended at 4 U.S.C. §§ 105-110)

Mineral Leasing Act for Acquired Lands, Pub. L. No. 382, 61 Stat. 907 (1947) (codified as amended at 30 U.S.C. §§ 351-359)

Federal Coal Leasing Amendments Act of 1975, Pub. L. No. 94-377, 90 Stat. 1083 (1976)

Louisiana Statutory Provisions

Louisiana Revised Statutes, Title 47, §§ 31, 631, 632, 633(7)(a), 633(8) and 633(9).

1892 La. Acts No. 12.

(The full text of the above referenced pertinent statutory provisions is set forth in Appendix G, p. 54a, *et seq.*)

STATEMENT OF THE CASE

In this case the State of Louisiana seeks to revisit, in slightly altered guise, the issues decided against it in *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369 (1964) and *Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th

Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968). In *Humble*, Louisiana had assessed ad valorem taxes on oil drilling equipment and pipelines owned, used, and kept by lessees of the United States within the confines of Barksdale Air Force Base ("Barksdale"). This Court held that the entirety of Barksdale is a federal enclave subject to the exclusive jurisdiction of the United States pursuant to Article I, Section 8, Clause 17 of the United States Constitution and thus is beyond the reach of the State's power to tax. Subsequently, the Fifth Circuit in *Cocreham*, applying *Humble*, held that Louisiana lacks power to impose severance taxes on oil and gas extracted from Barksdale. Here, Louisiana once again seeks to impose its severance tax upon Barksdale production, arguing that minor amendments to two statutes (one state and one federal) served implicitly to confer the taxing power that it previously lacked. The Louisiana courts below agreed, holding that although Barksdale undeniably remains a federal enclave, the state now is free to assert its taxing power without apparent restriction.

A. Factual Background[1]

In 1930, the City of Shreveport, the State of Louisiana and the Bossier Levee District ceded approximately 22,000 acres of land comprising Barksdale Air Force Base to the United States for a military post, flying field and bombing range. At the time of conveyance of Barksdale to the United States, Louisiana law provided that the United States "shall have the right of exclusive jurisdiction over the property . . . for all purposes, except the administration of the criminal laws . . . and the service of civil process." *Humble*, 376 U.S. at 371; *see* 1892 La. Acts No. 12 ("the Louisiana cession statute") (Appendix G, p. 65a).

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[1] Petitioners and the State stipulated to the facts in the Louisiana district court. (Appendix A, p. 2a).

The Louisiana cession statute specifically provided that any land ceded to the United States would be "exempt from all State, parochial, municipal or other taxation." 1892 La. Acts No. 12 (Appendix G, p. 65a).

Petitioners are successors in interest to protective oil and gas leases granted by the United States in 1951 and 1961 pursuant to Public Land Order Nos. 701 and 2178 covering parcels of land within Barksdale known as Parcel 1, Parcel 3, Parcel 4 and the Miss Murphy Parcel. After the 1968 *Cocreham* decision and until September 1982, the Louisiana Department of Revenue and Taxation recognized that the provisions of Article I, Section 8, Clause 17 of the Constitution of the United States, the decision of this Court in *Humble*, and the repeated decisions of the United States Court of Appeals for the Fifth Circuit,[2] prohibited the State of Louisiana from levying its severance tax upon oil and gas severed from lands within the confines of Barksdale. However, by letter dated September 30, 1982, the Department reversed its position and advised the Petitioners with interests in the Parcel 3 and Miss Murphy tracts that, in its opinion, Louisiana severance tax was due on oil and gas produced from federal lands, less the royalty interest of the United States. The State apparently changed its position in reliance on a 1973 amendment to the severance tax statute which changed the method of calculation of the amount of the tax on oil (but not gas) from quantity based to value based and a 1976 amendment to the Mineral Leasing Act for Acquired Lands of 1947.[3]

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[2] *See Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968); *Shell Oil Co. v. Mouton*, 410 F.2d 715 (5th Cir. 1969); *Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717 (5th Cir. 1969), *cert. denied*, 398 U.S. 957 (1970).

[3] The State also initially relied upon *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981); however, that case did not

Petitioners timely paid the State of Louisiana, under protest, the amount of severance tax claimed due for the production severed from lands covered by the Parcel 3 and the Miss Murphy leases. On December 29, 1982, Petitioners with interests in those tracts brought suit (Trial Court Docket No. 262,958) in the 19th Judicial District Court of Louisiana for recovery of the amounts paid under protest.[4] In 1987, the State proposed a severance tax assessment against Petitioner Rosewood on production from Parcel 1 and Parcel 4. On October 15, 1987, Rosewood paid the State, under protest, the entire amount of the State's proposed assessment and thereafter timely filed its proceedings (Trial Court Docket No. 323,597) for recovery of the amounts paid under protest. The Louisiana district court consolidated the two lawsuits for a decision on the briefs and the joint stipulation of facts. (Appendix C, p. 20a). All severance taxes purportedly due with respect to production from such parcels subsequent to the referenced payments have been paid under protest and, pursuant to Louisiana law, are to be disbursed upon a final decision herein.

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involve leases granted on a federal enclave and, therefore, is not pertinent.

[4] Petitioners in Trial Court Docket No. 262,958 also filed suit in United States District Court for the Western District of Louisiana seeking a declaratory judgment that under the "exclusive jurisdiction" of federal enclaves established pursuant to Article I, Section 8, Clause 17 of the United States Constitution, the decision of this Court in *Humble*, and the repeated decisions of the United States Court of Appeals for the Fifth Circuit, the State of Louisiana was prohibited from imposing its severance tax. In March 1983, the district court held that under the provisions of the Tax Injunction Act of 1937, 28 U.S.C. § 1341, it lacked jurisdiction to decide the federal question involved. The Fifth Circuit affirmed the district court's dismissal of the proceedings for lack of jurisdiction. *MRT Exploration Co. v. McNamara*, 731 F.2d 260 (5th Cir. 1984).

B. Legal Background

The United States Constitution grants the federal government exclusive legislative jurisdiction over federal enclaves. *See* U.S. Const. art. I, § 8, cl. 17 (giving Congress the power "[t]o exercise exclusive Legislation in all Cases whatsoever . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings").[5]

This Court has specifically held that Barksdale Air Force Base is a federal enclave subject to the exclusive legislative jurisdiction of the United States. *Humble*, 376 U.S. at 373. By virtue of its cession and the provisions of the Louisiana cession statute, Louisiana reserved to itself only the rights to enforce its criminal laws and to serve process on persons within Barksdale. The Louisiana cession statute expressly provided that property ceded to the United States was exempt from all state and local power of taxation. (Appendix G, p. 65a).

Despite a property's status as a federal enclave, a state may nevertheless exercise jurisdiction in areas that (i) it expressly reserved at the time the United States acquired the land; or (ii) the United States, via an act of Congress, has specifically retroceded jurisdiction back to

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[5] As this Court has unequivocally held:

> The question is not an open one. It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the state legislature, the jurisdiction theretofore residing in the state passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.

Surplus Trading Co. v. Cook, 281 U.S. 647, 652 (1930).

the state.[6] In the Louisiana cession statute, Louisiana did not reserve the power to tax; rather it explicitly relinquished it.[7] Thus, only the second means of exercising state legislative jurisdiction to tax property within a federal enclave – specific retrocession by Congress – is potentially available to the State in this case. *Humble*, 376 U.S. at 374. The Louisiana Court of Appeal relied on one such congressional retrocession of jurisdiction, the Buck Act, 4 U.S.C. § 105 *et seq.*, which allows state imposition

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[6] *See James v. Dravo Contracting Co.*, 302 U.S. 134, 147-48 (1937) (holding that a state may qualify its cession of jurisdiction by reservations not inconsistent with the use of the property by the United States); *United States v. Lewisburg Area Sch. Dist.*, 539 F.2d 301, 307 (3d Cir. 1976) ("Where there is a purchase by the United States for an art. I § 8 cl. 17 purpose and a cession by the state of exclusive jurisdiction, this jurisdiction can still be qualified either by the state, at the time when the land is purchased and the jurisdiction ceded, or by consent of the United States to the exercise of certain state laws within the enclave."); *Paul v. United States*, 371 U.S. 245, 263 (1963) ("The cases make clear that the grant of 'exclusive' legislative power to Congress over enclaves that meet the requirements of art. I, § 8, cl. 17, by its own weight, bars state regulation without specific congressional action."); *Lord v. Local Union No. 2088, Int'l Brotherhood of Elec. Workers*, 646 F.2d 1057, 1062-63 (5th Cir. Unit B) ("Congress is not in the habit of ceding jurisdiction by implication."), *reh'g denied*, 654 F.2d 723 (5th Cir. 1981), *and cert. denied*, 458 U.S. 1106 (1982); *see also Hancock v. Train*, 426 U.S. 167, 179 (1976) ("Because of the fundamental importance of the principles shielding federal installations and activities from regulation by the States, an authorization of state regulation is found only when and to the extent that there is 'a clear congressional mandate,' 'specific congressional action' that makes this authorization of state regulation 'clear and unambiguous.' ") (footnotes omitted).

[7] 1892 La. Acts No. 12, as in effect at the time of cession of Barksdale to the United States, specifically provided that the ceded land would be "exempt from all State, parochial, municipal or other taxation." (Appendix G, p. 65a).

of "income taxes" within federal enclaves, as authority for its decision that the Louisiana severance tax on oil and gas severed from lands located within the Barksdale enclave constituted an "income tax" under the Act.

In *Humble*, this Court concluded that an ad valorem tax on the value of equipment and property sought to be imposed by Louisiana within the confines of Barksdale did not constitute an income tax under the Buck Act. 376 U.S. at 374. Accordingly, it held Louisiana's attempt to levy the ad valorem tax within the enclave violated the exclusive legislative jurisdiction of the United States. The Fifth Circuit has repeatedly held that the Buck Act does not allow a different result for Louisiana's severance tax on oil and gas production. In *Cocreham*, the Fifth Circuit held that the State lacked the power to impose the same severance tax involved in this suit upon oil and gas extracted from one of the **same** leases involved in this suit. 382 F.2d at 938. Rejecting the State's very argument here that Congress had retroceded any power to impose severance taxes in the Buck Act, the Fifth Circuit held that "the Louisiana severance tax is simply not an income tax" under the Buck Act. *Id.* at 940.

The Fifth Circuit has reaffirmed this holding in two subsequent decisions. *See Shell Oil Co. v. Mouton*, 410 F.2d 715, 716 (5th Cir. 1969); *Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717, 718 (5th Cir. 1969). As recently as 1990, in a case where the Louisiana Department of Revenue was the moving party, the United States District Court for the Western District of Louisiana applied the *Cocreham* holding to prohibit the State from imposing the severance tax on minerals extracted pursuant to a Barksdale lease on Parcel 2, a tract contiguous to three of the tracts at issue here. *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990) (Appendix F, p. 33a).

In 1973, subsequent to this Court's decision in *Humble* and the Fifth Circuit's decision in *Cocreham*, but prior to the federal court's decision in *Tarver*, the Louisiana Legislature amended the Louisiana severance tax on oil.

While that 1973 legislation modified the procedure for the determination of the amount of severance tax due with respect to oil and condensate (but not for natural gas) from an amount calculated at a rate of so many cents per barrel of production (a volume based calculation) to a percentage of the value of the oil produced (a value based calculation), the incidence of taxation, the severance of minerals from the soil, did not change.

The Louisiana severance tax, including the 1973 amendment, was enacted by the Louisiana Legislature pursuant to the grant of authority established in Article X, Section 21 of the Louisiana Constitution of 1921[8] authorizing the imposition of severance taxes on minerals severed from the soil within the State. That constitutional grant of authority to levy a severance tax upon minerals severed is distinct and separate from the provision in Article X, Section 1 of the Louisiana Constitution of 1921[9] authorizing the legislature to impose income taxes.

The other statute relied upon by the Louisiana courts below is the Mineral Leasing Act for Acquired Lands ("MLAAL"), 30 U.S.C. §§ 351-59 (Appendix G, p. 54a), and the 1976 amendments to that Act (Appendix G, p. 56a). Congress enacted the MLAAL in 1947 to promote and encourage mineral development on the acquired lands of the United States. The MLAAL parallels the Mineral Leasing Act of 1920, which regulates government leases on federal lands which are not "acquired" lands.

As enacted in 1947, the MLAAL was expressly not applicable to mineral leases granted by the United States for certain enclaves, including "such deposits in such

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[8] Article X, Section 21 of the Louisiana Constitution of 1921 is identical in all pertinent aspects to Article VII, Section 4(B) of the Louisiana Constitution of 1974.

[9] The portion of Article X, Section 1 of the Louisiana Constitution of 1921 entitled "Income taxes" is identical in all pertinent aspects to Article VII, Section 4(A) of the Louisiana Constitution of 1974.

acquired lands as are . . . set apart for military or naval purposes." MLAAL, § 3; 30 U.S.C. § 352 (Appendix G, p. 54a. In 1976, however, many years after the leases involved in this case were granted under authority other than the MLAAL (the leases at issue were granted pursuant to Public Land Orders No. 701 and 2178), Congress amended Section 3 of the MLAAL to eliminate the military exclusion.[10] (Appendix G, p. 56a). Thus, after the 1976 amendment, certain military lands could be leased pursuant to the terms and provisions of the MLAAL.

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[10] The amendment was part of the Federal Coal Leasing Amendments Act of 1975, Pub. L. No. 94-377, 90 Stat. 1083 (1976), and was enacted to ensure that the uniform rules and regulations of the MLAAL would govern the development of coal and lignite mined from Camp Swift in Austin, Texas, a federal enclave set apart for military purposes, provided those lands were leased to a governmental entity which produces electrical energy for sale to the public and such governmental entity is located in the state in which the lands are located. Specifically, the legislative history with respect to the Coal Leasing Act provides:

> Present law does not permit the Secretary to lease the minerals underlying acquired military property, thus precluding the development of significant reserves known to exist under Camp Swift in Texas. These reserves are desired for electrical power generation by the city of Austin, Texas. Section 12 of the 1975 amendments would amend the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) to permit leasing to a government entity of coal or lignite under acquired lands, provided the Secretary of Defense concurs.

Federal Coal Leasing Amendments Act of 1975, H.R. Rep. No. 681, 94th Cong., 2nd Sess. 21 (1975), *reprinted in* 1976 U.S.C.C.A.N. 1943, 1957.

C. Prior Proceedings In This Case

On January 18, 1990, the Louisiana state district court issued its written reasons for judgment in which it upheld the validity of the severance tax as applied to oil and gas severed from lands within Barksdale. (Appendix C, p. 25a). The state district court issued its final judgment based on these reasons on September 15, 1993, dismissing Petitioners' suit. (Appendix E, pp. 29-31a).

The Louisiana district court concluded that imposition of the severance tax on oil and gas produced from the lands within Barksdale did not conflict with the United States Constitution. (Appendix C, p. 25a). The court properly observed that Barksdale is a federal enclave, subject to the exclusive legislative jurisdiction of the United States. (*Id.* at 22a). The court nonetheless held that Louisiana had the right to impose its severance tax on minerals extracted from the lands within Barksdale because the tax met the definition of an "income tax" under the Buck Act, as to which "income tax" the United States had retroceded taxation power to the State. 4 U.S.C. §§ 106, 110(c) (Appendix G, p. 56a-57a).

The district court recognized the Fifth Circuit *Cocreham* opinion by Judge Wisdom, which held that the State's attempt to impose the same severance tax upon minerals severed pursuant to the very same mineral lease currently at issue was **not** an income tax under the Buck Act, and, therefore, the state was prohibited from legislating in this regard. *Cocreham*, 382 F.2d at 939-40. In doing so, the Louisiana court even acknowledged that the *Cocreham* court had followed this Court's opinion in *Humble*, which involved ad valorem taxes on the value of personal property of the lessee of the United States located within Barksdale. *Id.* at 938 ("While there are differences between the taxes involved, we think that *Humble* did not rest on the peculiar attributes of the ad valorem tax. It rested instead on the general principle that a state lacks authority to levy any tax in an area under the exclusive jurisdiction of the United States.").

However, the state district court relied on its interpretation of the 1973 amendment to the severance tax statute as its basis for adopting the State's assertion that *Cocreham* no longer controlled. The district court held that by that amendment, Louisiana had changed its severance tax into an income tax qualifying under the Buck Act. The district court ignored in its analysis both the fact that Louisiana had not similarly changed the severance tax on gas and the fact that legislation establishing the severance tax and the 1973 amendments to the severance tax on oil had been enacted pursuant to the provisions of the Louisiana Constitution authorizing imposition of severance taxes, not the provisions authorizing the imposition of income taxes.

The state district court also concluded that the state had the right to impose a severance tax on the minerals pursuant to the MLAAL, as amended in 1976. (Appendix C, p. 23a). The Louisiana court stated that although initially the MLAAL did not specifically apply to lands like Barksdale set aside for military purposes, the 1976 amendment's removal of this exclusion brought these Barksdale leases, which were granted in 1951 and 1961 subject to Pubic Land Orders Nos. 701 and 2178 (not under the authority of the MLAAL), under the MLAAL. The court apparently embraced the State's argument that Section 8 of the MLAAL, providing that nothing in the Act shall be construed to affect the right of states to exercise "any right which they may have with respect to properties covered by leases issued under this Act," constituted an implicit retrocession to the states of the right to tax minerals extracted from beneath federal enclaves. (Appendix C, p. 24a).

The Louisiana Court of Appeal affirmed the district court's judgment, agreeing with the lower court that the amendment to the Louisiana severance tax brought it within the definition of an "income tax" under the Buck Act and was therefore valid. (Appendix A, p. 10a). The

court rejected Petitioners' contention that the Fifth Circuit's decision in *Cocreham* was dispositive, adopting without further analysis the lower court's opinion that by amending the severance tax to change the basis for calculating the amount of severance tax due on oil and condensate to a percentage of the value of the oil and condensate produced, the Louisiana Legislature had transformed the severance tax into an "income tax" for purposes of the Buck Act. The Louisiana Court of Appeal expressly recognized, however, that the basis for calculating the amount of the severance tax on gas remained based upon the number of cubic feet of gas produced – not the value thereof. The Louisiana Court of Appeal also affirmed the state district court's holding that the MLAAL applied to these leases and that the 1976 amendment to the MLAAL "strengthened" the State's right to impose severance taxes on the oil and gas. (Appendix A, p. 13a). Neither the district court nor the Court of Appeal gave any effect, however, to the federal district court's opinion in *Tarver*.

In a per curiam opinion, the Louisiana Supreme Court denied Petitioners' application for a writ of certiorari on the issue presented to this Court, that is, whether the severance taxes sought to be imposed on oil and gas extracted from lands lying within the confines of Barksdale Air Force Base, a federal enclave, violate Article I, Section 8, Clause 17 of the United States Constitution. (Appendix B, p. 18a).[11]

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[11] The Louisiana Supreme Court denied Petitioners' application for a writ of certiorari on the issue presented to this Court, (Appendix B, p. 18a), however it reversed and remanded, per curiam, on the state's reconventional demand (i.e., counterclaim) as to whether Louisiana state law permitted the state to impose severance taxes for the 1979-82 period in light of the Louisiana Court of Appeal's opinion upholding the imposition of the tax.

D. Presentation Of Federal Question To Lower Courts

As reflected in the foregoing and the opinions of the Louisiana courts, the Louisiana trial court and Louisiana Court of Appeal each acknowledged the presentation of the constitutional issue founded upon Article I, Section 8, Clause 17 of the United States Constitution and its Supremacy Clause (Appendix A, p. 5a; Appendix C, p. 20a), as well as the ancillary federal questions involving the interpretation of the Buck Act (Appendix A, p. 8a; Appendix C, p. 22a), and the MLAAL, as amended (Appendix A, p. 11a; Appendix C, p. 23a).

REASONS FOR GRANTING THE PETITION

Article I, Section 8, Clause 17 of the United States Constitution embodies the Framers' understanding that a federal military enclave "should be exempt from the authority of the particular State." The Federalist No. 43 (James Madison). Whether states have legislative jurisdiction to impose severance and other similar taxes in such federal enclaves is a matter of substantial constitutional and practical importance. This Court appeared to have resolved that question in *Humble*, but the decision below ignores *Humble* and has reopened the question once again. Review should be granted in order to lay to rest the doubts the Louisiana courts' decisions raise concerning the continuing vitality of *Humble* and, additionally, to bring Louisiana into conformity with federal law.

The ruling below also directly conflicts with decisions of the Fifth Circuit and the United States District Court for the Western District of Louisiana. Under the ruling, Petitioners must pay a form of state tax that those federal courts have held to be invalid as a matter of federal constitutional law.

The principal holding below – that the Louisiana severance tax constitutes an "income tax" which the state may impose pursuant to the Buck Act – is contrary to

both *Humble* and *Cocreham*, as well as the recent decision of the federal district court in *Tarver*. In *Humble*, this Court broadly held that the United States has exclusive jurisdiction over Barksdale pursuant to Article I, Section 8, Clause 17 of the Constitution, and consequently, that "Louisiana is without jurisdiction to levy an ad valorem tax on privately owned property situated in the tract." 376 U.S. at 370. The Fifth Circuit in *Cocreham* correctly understood this to mean that Louisiana is precluded from "levying and collecting a tax on oil and gas severed from the land by a third party under a lease from the United States." 382 F.2d at 931. In so holding, the court explicitly rejected the State's argument that the Louisiana severance tax was really an income tax which the State was entitled to impose under the Buck Act. *Id.* at 940. Louisiana subsequently amended its severance tax so that the amount of the tax on oil (but not gas) is measured by value rather than quantity, but this merely confirmed the essential similarity between the Louisiana severance tax and the ad valorem tax at issue in *Humble*. Each tax is measured by the **value** of the item subject to tax and, as the Fifth Circuit stated in *Cocreham*, "the Louisiana severance tax is simply not an income tax." *Id.*

The secondary holding below – that a 1976 amendment to the Mineral Leasing Act for Acquired Lands empowers Louisiana to impose severance taxes with respect to the extraction of oil and gas from Barksdale – is also in direct conflict with the decision of the district court in *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990). These conflicting decisions create inconsistent state and federal rules for precisely the same federal enclave. Louisiana could have taken an appeal to the Fifth Circuit from the adverse decision in *Tarver*, but it deliberately chose not to do so and presumably will not do so in any other similar cases.

Preserving the exclusive jurisdiction of the United States over federal enclaves and keeping their affairs free of impermissible state intrusion is of vital importance to the country, as the Framers concluded in drafting Article I, Section 8, Clause 17 of the United States Constitution. To balance the competing need for the establishment of federal enclaves and to protect their functions from unauthorized state interference with the need to allow the states the ability to preserve their private rights, the Framers required a state's concurrence in the establishment of enclaves and allowed the states to condition their cession of jurisdiction with any stipulation they chose.[12]

The need for exclusive federal legislative jurisdiction retains validity and vitality, especially in the area of state taxation. This Court has steadfastly maintained that absent (i) a reservation by the state of a right to tax in the cession of land and jurisdiction to the federal government, or (ii) a specific retrocession of jurisdiction in an act of Congress, a state lacks power to tax property within an area of exclusive federal jurisdiction. *See, e.g., Humble*, 376 U.S. at 374; *James v. Dravo Contracting Co.*, 302 U.S. 134, 148-49 (1937). It is undisputed in this case that Louisiana's cession in 1930 of the property that became Barksdale Air Force Base expressly ceded the State's authority to tax. Thus, only a

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[12] As Madison explained:

> The necessity of a like authority [to that over seats of government] over forts, magazines, etc., established by the general government, is not less evident. The public money expended on such places, and the public property deposited in them, requires that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend, to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated, by requiring the concurrence of the States concerned, in every such establishment. . . .

The Federalist No. 43 (James Madison).

specific retrocession by Congress of the jurisdictional power to impose the taxes at issue could vest Louisiana with such authority. *See Humble*, 376 U.S. at 374 ("When Congress has wished to allow a State to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated. . . . "); *Mississippi River Fuel Corp. v. Cocreham*, 390 F.2d 34, 35 (5th Cir. 1968) ("Except with the consent of the United States, the State's taxing power cannot operate within the confines of a federal enclave.").

The Louisiana Court of Appeal's decision destabilizes a settled area of law, conflicts with Louisiana's cession statute, this Court's decisions, decisions of the United States Court of Appeals for the Fifth Circuit and other federal court decisions, and sanctions a significant state intrusion into an area of exclusive federal jurisdiction, in contravention of the United States Constitution.

I THE DECISION OF THE LOUISIANA COURT CONFLICTS WITH THE DECISION OF THIS COURT IN *HUMBLE*, DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND FEDERAL DISTRICT COURT DECISIONS.

A. The Louisiana Court Of Appeal Erred In Deciding That The Louisiana Severance Tax Was An Income Tax Under The Buck Act.

Under the terms of the Louisiana cession statute (1892 La. Acts No. 12), which was applicable to the 1930 cession of the Barksdale enclave, and the limited retrocession by Congress in the Buck Act, the severance tax here in issue could only be assessed if it constitutes an "income tax," as that term is defined under the Buck Act. Recognizing that this was the only avenue by which it could validate Louisiana's assessment, the Louisiana Court of Appeal concluded that the Louisiana severance

tax was an "income tax" for purposes of the Buck Act. (Appendix A, p. 10a). The court's holding contravenes this Court's decision in *Humble* and unequivocally conflicts with three decisions of the Fifth Circuit, including *Cocreham*, as well as the decision of the United States District Court for the Western District of Louisiana in *Tarver*.[13]

In *Cocreham*, the Fifth Circuit held that the Louisiana severance tax, as applied to production from properties subject to **one of the very same leases** at issue here, did **not** meet the definition of an income tax under the Buck Act, stating that "[w]e are not free to expand the technical and precise language that Congress has used." 382 F.2d at 940. The Fifth Circuit steadfastly adhered to this position in two subsequent cases involving the same issue. *Shell Oil*, 410 F.2d at 716; *Sinclair Oil and Gas*, 410 F.2d at 718. Indeed, the Fifth Circuit rebuked the State for attempting to revisit issues of which the court had already "clearly and concisely disposed": "[T]he Collector seeks in effect to relitigate this question of law which we have already settled on the identical question of law, involving the identical federal military establishment." *Shell Oil*, 410 F.2d at 716-17.

Although acknowledging the direct relevance of *Cocreham* and its progeny, the Louisiana Court of Appeal here nevertheless dismissed this line of federal appellate authority in affirming the Louisiana district court. (Appendix A, p. 5a-7a). It concluded that it was not bound by *Cocreham* because a 1973 amendment to the Louisiana severance tax on oil (but not gas) changed the method of calculation of the amount of the tax thereby

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[13] *See Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968); *Shell Oil Co. v. Mouton*, 410 F.2d 715 (5th Cir. 1969); *Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717 (5th Cir. 1969); *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990) (Appendix F, p. 33a).

making, in the Court of Appeal's opinion, the severance tax an income tax under the Buck Act. (Appendix A, p. 10a). The amendment to the Louisiana severance tax, however, does not serve to distinguish *Cocreham* because the fundamental nature of the severance tax did not change for purposes of its characterization under the Buck Act; the incidence of taxation, the severance of the minerals, remained precisely the same.

Congress enacted the Buck Act in 1940 to allow the states to assess income taxes on private persons residing in federal enclaves or receiving income from transactions occurring or services performed in such areas. *See* S. Rep. No. 1625, 76th Cong., 3d Sess. 3, 5 (1940); *Humble*, 376 U.S. at 374; *Cocreham*, 382 F.2d at 939-40. The Act defines "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." 4 U.S.C. § 110(c) (Appendix G, p. 57a). Whether a particular state tax meets the definition of an income tax under the Buck Act is a question of federal law. *Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624, 628-29 (1953); *United States v. Lewisburg Area Sch. Dist.*, 539 F.2d 301, 310 (3d Cir. 1976). The legislative history of the Buck Act indicates that the term "income tax" encompasses state taxes which are plainly assessed on **income**, even though not denominated "income taxes" by the state. S. Rep. No. 1625, 76th Cong., 3d Sess. 5 (1940) (noting committee's intent to "include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or by any other name) if it is levied on, with respect to, or measured by, net income, gross income, or gross receipts"); *United States v. City & County of Denver*, 573 F. Supp. 686, 691 (D. Colo. 1983) ("[I]t seems apparent that the variations contemplated by the Congress were variations in the name or the **form** of the State tax, but not variations in the **substance** of the tax.") (emphasis supplied).

The "income tax" exception to exclusive federal jurisdiction granted by the Buck Act applies to individuals,

not to property, as demonstrated by its text and the fact that Congress enacted it to equalize income tax liability among federal employees residing on and off federal enclaves. *See United States v. Lewisburg Area Sch. Dist.*, 539 F.2d 301, 309 (3d Cir. 1976); *see also United States v. City & County of Denver*, 573 F. Supp. 686, 691 (D. Colo. 1983) ("The historical context in which the Buck Act was enacted indicates that Congress was legislating with respect to taxes on salaries, wages, commissions and other forms of income.").

The great majority of cases determining that a state tax meets the Buck Act definition of an income tax involve taxes levied on taxpayers, on their salaries, or on their wages, but not on their property.[14] By comparison, even after the 1973 amendment, the Louisiana severance tax is still **not** "levied on, with respect to, or measured by, net income, gross income, or gross receipts." 4 U.S.C.

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[14] *See, e.g., Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624, 627-28 (1953) (occupational tax or license fee found to be tax upon individual's earnings); *United States v. Lewisburg Area Sch. Dist.*, 539 F.2d 301, 304 (3d Cir. 1976) (occupation tax imposed on individuals); *Jefferson County v. Acker*, 850 F. Supp. 1536, 1537 (N.D. Ala. 1994) ("privilege, license or occupational tax" imposed upon individuals in certain professions); *Rountree v. City & County of Denver*, 596 P.2d 739, 740 (Colo. 1979) (employment or occupation tax "on every natural person who performs sufficient services in Denver to be paid $250 per month by a 'salary, wage, commission or other compensation basis' "); *Morse v. Johnson*, 282 A.2d 597, 598 (Me. 1971) (traditional state individual income tax); *Olson v. Dep't of Revenue*, 726 P.2d 1162, 1164 (Mont. 1986) (withholding taxes from wages); *Burns v. State*, 439 P.2d 702, 703 (N.M.) (tax on wages), *cert. denied*, 393 U.S. 841 (1968); *Kiker v. City of Philadelphia*, 31 A.2d 289, 291 (Pa.) (tax on salaries, wages, commissions and other compensation), *cert. denied*, 320 U.S. 741 (1943); *City of Portsmouth v. Fred C. Gardner Co.*, 211 S.E.2d 259, 261 (Va. 1975) (city license tax upon contractors engaging in business in that city).

§ 110(c) (Appendix G, p. 57a). Rather, the amended Louisiana severance tax remains a tax on the mineral itself,[15] not on a private taxpayer, a factor specifically relied upon by the *Cocreham* court in deciding that the Louisiana severance tax was **not** an income tax under the Buck Act. *See Cocreham*, 382 F.2d at 940 ("Congress has authorized the states to impose an income tax **on private persons** in federal enclaves . . . .") (emphasis supplied). Although the Buck Act "income tax" determination is governed and controlled by federal law, it should still be noted that the Louisiana severance tax, and its amendment, were enacted pursuant to the provisions of the Louisiana constitution authorizing the imposition of severance taxes, a provision separate from the constitutional provisions authorizing the imposition of income taxes. Notably, Petitioners are liabile for and pay Louisiana income taxes, wholly separate and apart from these severance taxes, for income attributable to the sale of the production here at issue.

Thus, the Louisiana severance tax remains today a tax on property, the oil and gas severed from the land. As demonstrated by this Court's opinion in *Humble*, a tax on the **value** of property is not equivalent to a tax on **income** under the Buck Act. 376 U.S. at 374. In *Humble*, this Court expressly recognized the Buck Act as an exception to the United States' exclusive legislative jurisdiction in federal enclaves, but nevertheless struck down Louisiana's ad

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[15] *See* La. Const. of 1921, art. X, § 21 (Appendix G, p. 57a-58a) ("Taxes may be levied on natural resources severed from the soil or water. . . . "), La. R.S. 47:631 ("Taxes as authorized by Section 21 of Article X of the Constitution of Louisiana, are hereby levied upon all natural resources severed from the soil or water, including . . . minerals such as oil, gas. . . . ") (Appendix G, p. 60a). The Louisiana statutes provide that any unpaid tax shall become a lien on the mineral, not the mineral owner, and follows the mineral. La. R.S. 47:632 (Appendix G, p. 60a).

valorem property tax, a tax on the **value** of the mineral lessee's equipment and improvements within the confines of Barksdale, as precluded by the terms of Louisiana's cession and the United States Constitution. *Id.* The Louisiana Court of Appeal's reasoning thus creates an irreconcilable conflict with a decision of this Court, a conflict made obvious by the decisions of the Fifth Circuit in *Cocreham* and its progeny.[16]

The Louisiana Court of Appeal's attempt to distinguish *Cocreham* is also directly contrary to *Tarver*, the federal district court opinion that postdates the amendment to the Louisiana severance tax statute and the 1976 amendment to the MLAAL, and which concerns leased land within Barksdale contiguous to the tracts at issue here. *Tarver* involved an attempt by the State of Louisiana to impose the severance tax on minerals extracted from Parcel 2, which is contiguous to Parcels 1 and 3 and the Miss Murphy parcel. Chief Judge Tom Stagg for the Western District of Louisiana specifically rejected the State's argument that changes in the method of calculation of the tax suddenly rendered the tax an "income tax" under the Buck Act. The federal district court stated that it "cannot believe that the change in the method for calculation of the amount of the tax on the oil severed from a quantity-based tax to a value-based tax alters the Fifth Circuit's conclusion that the tax is not an income tax." (Appendix F, p. 49a). The court observed that the amended tax continues to be levied on natural resources, not on individual taxpayers, and that the tax is not based upon

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[16] The Fifth Circuit recognized that any differences between the ad valorem tax involved in *Humble* and the Louisiana severance tax were unimportant for purposes of its decision. *See Cocreham*, 382 F.2d at 938 ("Just as the state could not tax personal property located on Barksdale Field, it cannot impose a severance tax when the incidence of taxation, the severance of minerals from the soil, takes place on a federal enclave, outside the jurisdiction of the State of Louisiana.").

income at all. *Tarver* represents yet another federal authority with which the Louisiana Court of Appeal's opinion conflicts.

Finally, even though acknowledging the direct relevance of *Cocreham* and its progeny, the Louisiana Court of Appeal did not even attempt to reconcile its holding with the fact that the severance tax on natural gas produced from the Barksdale lands was not amended (as is significant to these proceedings) subsequent to *Cocreham*, and the amount of that tax continues to be calculated upon the volume of gas produced, rather than its value. By dismissing this problem on the alternative basis that "we find that the Louisiana Severance Tax may be imposed as a result of the 1976 amendment to the Mineral Leasing Act for Acquired Lands," (Appendix A, p. 11a) the court implicitly concedes that even under its reasoning the tax on natural gas is not an income tax under the Buck Act.

B. Congress Did Not Retrocede To Louisiana The Power To Levy Severance Taxes Within The Barksdale Enclave With Its 1976 Amendments To The MLAAL.

The 1976 amendment to the MLAAL did not retrocede to a state any power previously ceded by a state to the United States. Yet in this case, the Louisiana Court of Appeal accepted Louisiana's argument that the 1976 amendment to the MLAAL granted it the authority to levy the severance taxes here in issue. The State's argument, accepted by the Louisiana Court of Appeal, was that the savings clause in Section 8 of the MLAAL, which provides that nothing contained in the Act shall affect any right that a state may have to levy and collect taxes, constituted a congressional retrocession of authority to the states in 1947. Once Congress removed the exclusion of certain military and naval enclaves from the scope of the MLAAL in 1976, the State argued, it regained the power to levy severance taxes on oil and gas severed from land within the enclave. This argument was

accepted by the Louisiana Court of Appeal, affirming the Louisiana district court's finding that "[t]he power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened by" the 1976 amendment to the MLAAL. (Appendix C, p. 24a). This finding directly conflicts with all applicable precedent.

This Court has specifically recognized congressional retrocession of power as a necessary step preceding any constitutional state intrusion into a federal enclave, in particular the Barksdale enclave. *Humble*, 376 U.S. at 374. The MLAAL does not, either as originally enacted or as amended, confer any legislative or enforcement power to any state within any federal enclave. Rather, in particular with respect to state taxation powers, the MLAAL is expressly and emphatically neutral:

> Nothing contained in the Act shall be construed to affect the rights of the State or other local authorities to exercise any right **which they may have** with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

(MLAAL, § 8; 30 U.S.C. § 357; Appendix G, p. 55a, emphasis supplied). Thus, Section 8 of the MLAAL simply preserves to the states any existing right which they may have retained to tax the properties of a lessee of the United States in a federal enclave.

As this Court found in *Humble* in 1964, in ceding to the United States the property constituting Barksdale Air Force Base, Louisiana did not preserve **any** right to levy and collect taxes inside the enclave. 376 U.S. at 374. Rather, it specifically ceded any such power to the United States. The only power Louisiana now has to levy taxes on the Barksdale enclave is pursuant to the specific retrocession of power by Congress, as in the Buck Act, as recognized by this Court in *Humble*. Thus, the Louisiana

district court's conclusion that "the power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened" by the 1976 amendment to the MLAAL was meritless. Louisiana had no such "power" to "strengthen" as to the Barksdale enclave because it had specifically and explicitly ceded all such power to the United States in 1930.

Moreover, no implicit retrocession can be imputed to the 1976 amendment to the MLAAL. Nothing on the face of the amendment indicates a specific intention to restore power previously and explicitly ceded by a state to the United States. The law is clear that any such retrocession of power to a state must be specific. As stated by this Court in *Paul v. United States*, 371 U.S. 245, 263 (1963), "[t]he cases make clear that the grant of 'exclusive' legislative power to Congress over enclaves . . . , by its own weight, bars state regulation without specific congressional action." *Accord Humble*, 376 U.S. at 374; *Lord v. Local Union No. 2088, Int'l Brotherhood of Electrical Workers*, 646 F.2d 1057, 1062-63 (5th Cir. Unit B,), *reh'g denied*, 654 F.2d 723 (5th Cir. 1981), *and cert. denied*, 458 U.S. 1106 (1982).

In concurring with the Louisiana district court's holding that the MLAAL, as amended, "strengthened" Louisiana's power to impose a severance tax, the Louisiana Court of Appeal again reached a result plainly inconsistent with this Court's decision in *Humble*, and diametrically opposed to Fifth Circuit decisions, including *Cocreham*, and the recent decision of the United States District Court for the Western District of Louisiana in *Tarver*. *Humble* unequivocally held that the Louisiana state and local governments were prohibited from imposing taxes upon the value of the properties of a lessee of the United States located upon the Barksdale federal enclave, absent a specific retrocession of taxation powers by the United States. The MLAAL cedes no such power. Rather, it merely provides that it does **not affect** any right a state may have. Thus, the 1976 amendments to the

MLAAL did not have the effect of legislatively overruling the holding of this Court in *Humble*.

II THE DECISION OF THE LOUISIANA COURT OF APPEAL UNSETTLES THE SETTLED LAW IN THE IMPORTANT AREA OF FEDERAL ENCLAVE JURISDICTION.

Prior to the opinion of the Louisiana Court of Appeal, the law as established by *Humble* was clear, incontrovertible, and recognized by all federal courts. What the Louisiana court has attempted to do is unsettle the law.

The attempts by the State of Louisiana to renege on its ceding of exclusive jurisdiction over the Barksdale Federal enclave have continued now for more than 40 years. From the issuance of this Court's opinion in *Humble* until this decision, those attempts have been uniformly rebuffed by all federal courts. As to the Barksdale severance taxes involved here, there have been no less than six such attempts, documented through decision of the Louisiana Supreme Court,[17] decisions of the United States Court of Appeals for the Fifth Circuit,[18] and through a recent final decision of the United States District Court for the Western District of Louisiana.[19] Indeed,

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[17] *See Murphy Corp. v. Fontenot*, 73 So.2d 180 (La. 1954), *cert. denied*, 348 U.S. 831 (1955).

[18] *See Mississippi River Fuel Corp. v. Fontenot*, 234 F.2d 898 (5th Cir.), *cert. denied*, 352 U.S. 916 (1956); *Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968); *Shell Oil Co. v. Mouton*, 410 F.2d 715 (5th Cir. 1969); *Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717 (5th Cir. 1969), *cert. denied*, 398 U.S. 957 (1970).

[19] *See Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990); Appendix F, p. 33a.

litigation over the severance taxation of Barksdale production continues even now.[20]

This Court obviously thought it had put the jurisdictional issues to rest in *Humble*, for its decision there was clear and unequivocal. As is apparent from the Louisiana Court of Appeal's opinion, however, it did not. This Court now confronts the anomalous situation where contiguous parcels subject to identical mineral leases from the United States in a federal enclave have been disparately treated: the production from four parcels having been held subject to Louisiana's taxing power by the Louisiana Court of Appeal here, and the production from another parcel, Parcel 2, having been held not subject to such taxation by a federal district court applying the Supremacy Clause of the United States Constitution, this Court's opinion in *Humble*, and consistent Fifth Circuit precedent.

Only this Court can rectify the situation. It should do so, reiterating its holding in *Humble* that the jurisdiction of the federal government in this enclave is primary, controlling and exclusive, and that Louisiana state severance taxes cannot be levied on production from lands within the Barksdale federal enclave. *See Humble*, 376 U.S. at 372-73.

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[20] Litigation continues with respect to oil and gas severed from Parcels 1 and 4 within Barksdale as reflected by the decision entered on July 10, 1995 by the Civil District Court for the Parish of Orleans, State of Louisiana in those proceedings styled *Shell Oil Co. v. Secretary, Revenue and Taxation*, No. 91-8635, which decision is appealable to the Louisiana Fourth Circuit Court of Appeal, a circuit different from the circuit from which the decision complained of herein was decided.

CONCLUSION

Accordingly, this Court should issue a writ of certiorari to the Louisiana Court of Appeal, First Circuit, and reverse the judgment of that court and the Louisiana district court.

Respectfully submitted,

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Counsel for Petitioners

August 17, 1995

No. 95-___

In The

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

v.

SECRETARY, LOUSIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

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APPENDICES

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APPENDIX A

MRT Exploration Company, Mississippi River Transmission Corporation, Murphy Oil Corporation, Pennzoil Producing Company, Texas Gas Exploration Corporation and Arkla, Inc.

v.

Shirley McNamara, Secretary, Louisiana Department of Revenue and Taxation.

Rosewood Resources, Inc.

v.

Shirley McNamara, Secretary, Louisiana Department of Revenue and Taxation.

No. 94 CA 0063, 94 CA 0064.
Court of Appeal of Louisiana,
First Circuit.

Dec. 29, 1994.
Rehearing Denied Feb. 2, 1995.

Before LOTTINGER, C.J., and CARTER and PITCHER, JJ. PITCHER, Judge.

Plaintiffs[1] filed this action to recover severance taxes paid under protest for a period beginning in October of

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[1] Suit Number 262,928 and Suit Number 323,597 were consolidated by the trial court. We will refer to the appellants from both suits collectively as "plaintiffs." Plaintiffs in Suit Number 262,928 (our docket number 94 CA 0063) are Arkla, Inc., Pennzoil Producing Company, Arkla Exploration Company, as successor to the interests of MRT Exploration Company and Mississippi River Transmission Corporation, Murphy Oil USA, Inc., and Total Minatome Corporation, as successor to the interests of Texas Gas Exploration Corporation by corporate merger. The plaintiff in Suit Number 323,597 (our docket number 94 CA 0064) is Rosewood Resources, Inc.

1982. Plaintiffs argued that the Louisiana Severance Tax Statutes were unconstitutional as applied to oil and gas production from the Barksdale Air Force Base, a federal enclave. In response, defendant, the Louisiana Department of Revenue and Taxation, filed a reconventional demand for severance taxes covering the period from December of 1979 through September of 1982.[2] The trial court dismissed plaintiffs' claims, holding that the Louisiana Severance Tax Statutes were valid and enforceable. The trial court also granted judgment in favor of defendant on its reconventional demand. We affirm.

FACTS

The facts of these two consolidated cases were adduced by written stipulation and excellently summarized in the trial court's written reasons for judgment. We will adopt those reasons as our own. They are as follows:

> The State of Louisiana, the City of Shreveport and the Bossier Levee District conveyed 22,000 acres located in Bossier Parish to the United States in 1930 for the construction of Barksdale Air Force Base. The Bureau of Land Management leased the mineral rights in the portion of the base known as the "Parcel 3 Lands" to Union Producing Company in 1961. Arkla, Inc., Arkla Exploration Company, Pennzoil Producing Company, Total Minatome Corporation and Murphy Oil USA, Inc. are the successors of Union Producing Company's rights. The Bureau leased rights in the property

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[2] The reconventional demand was filed in Suit Number 262,928 only.

known as the "Miss Murphy USA Lease" to W.R. Stephens and Natural Gas and Oil Corporation. Arkla Exploration Co. and Murphy Oil USA, Inc., are the successors of the leasehold rights of W.R. Stephens and Natural Gas and Oil Corporation. These seven lessees are the plaintiffs in Suit Number 262,928.

The Bureau of Land Management leased the mineral rights in the property known as the "Parcel 1" and "Parcel 4" land to Shell Oil Company in 1961. Rosewood Resources, Inc., is the successor in interest of the leasehold rights of Shell Oil Company and is the plaintiff in Suit Number 323,597.

The State of Louisiana notified the Suit Number 262,928 plaintiffs that $38,535.37 was owed in accordance with L.S.A.-R.S. 47:631 as a tax on the severed oil and gas for the period beginning October 1982. That amount was paid under protest pursuant to L.S.A.-R.S. 47:1576 and Suit Number 262,928 was filed for the recovery of that amount and all amounts paid since, which is in excess of $1,858,000.00.

The State notified Rosewood Resources that oil and gas severance taxes in the amount of $123,772.65 for the period March, 1986 through June, 1987, were being assessed from Rosewood in connection with the Barksdale leases in accordance with L.S.A.-R.S. 47:631. Rosewood paid the assessment under protest on October 15, 1987. Suit Number 323,597 was then filed by Rosewood to recover those amounts plus the assessments paid from July, 1987 through the present, an amount in excess of $314,000.

Two federal court proceedings were intstigated [sic] a week prior to the filing of the first

state court action. The cases were dismissed based upon the Tax Injunction Act, 28 U.S.C. Sec. 1341 which denies Federal Court jurisdiction in a proceeding of this nature.

Appeals were taken to the Fifth Circuit in both cases and the dismissal was affirmed. The Court held in MRT Exploration v. McNamara, 731 F.2d 260 (Ct. App. 5th Cir. 1984), that the Louisiana Department of Revenue and Taxation is taxing only the revenues of the plaintiffs and not the royalty going to the United States and that there is no reason why Louisiana should be any less free from federal interference in the administration or [sic] its own fiscal affairs because these plaintiffs extracted mineral, which came beneath federal lands. The Fifth Circuit then directed the matter to state courts for a determination of the validity of the tax. MRT Exploration, 731 F.2d at 264.

After taking the matter under advisement, the trial court determined that the Louisiana Severance Tax was an "income tax" within the meaning of the Buck Act. The trial court further determined that the 1976 amendment to the 1947 Mineral Leasing Act for Acquired Lands governed the leases at issue.

In supplemental written reasons for judgment, the trial court determined that plaintiffs in Suit Number 262,928 were liable for severance taxes for the period of December, 1979 through September, 1992. From this decision, plaintiffs have appealed, raising two sets of issues.

ISSUES

MAIN DEMAND

The first set of issues addresses the trial court's reasons for judgment entered on the main demand on January 18, 1990, and are as follows: (1) whether the State of Louisiana may impose a severance tax upon the minerals severed from within the confines of Barksdale Air Force Base without infringing upon the limitations established by Article I, Section 8, Clause 17 of the Constitution of the United States; (2) whether the Louisiana Severance Tax, as in effect for the years at issue in these proceedings, is an "income tax" within the meaning of the Buck Act; and (3) whether the 1976 Amendment to the Mineral Leasing Act for Acquired Lands of 1947 is applicable to the leases in the instant case.

I.

Plaintiffs argue that the Louisiana Severance Tax[3] infringes upon Article I, Section 8, Clause 17 of the Constitution of the United States. Plaintiffs contend that the cases of Humble Pipe Line Company v. Waggonner, 376 U.S. 369, 84 S.Ct. 857, 11 L.Ed.2d 782 (1964), and Mississippi River Fuel Corporation v. Cocreham, 382 F.2d 929 (5th Cir. 1967), cert. denied, 390 U.S. 1014, 88 S.Ct. 1264, 20 L.Ed.2d 164 (1968) and 390 U.S. 1015, 88 S.Ct. 1264, 20 L.Ed.2d 164 (1968), effectively settled this issue; therefore, the trial court erred in failing to follow the dictates of these cases.

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[3] LSA-R.S. 37:631-646.

Article I, Section 8, Clause 17 of the United States Constitution permits the United States to obtain exclusive jurisdiction over lands within a State. It provides as follows:

> The Congress shall have Power . . .
>
> > To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings. . . .

In Waggonner, the United States Supreme Court rejected Louisiana's attempt to impose an ad valorem tax on the property located on Barksdale Air Force Base, a federal enclave. The Court concluded that Congress had exclusive legislative power within the confines of a federal enclave. However, the Supreme Court noted that "[w]hen Congress has wished to allow a State to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. Secs. 104-110." Waggonner, 376 U.S. at 374, 84 S.Ct. at 860-861.

In Cocreham, the U.S. Fifth Circuit Court of Appeals held that Louisiana could not exact severance taxes on oil and gas produced by the lessee, a private corporation, under mineral lease from the United States on land that was part of Barksdale Air Force Base. In Cocreham, 382

F.2d at 938, the court stated that, "[j]ust as the state cannot tax personal property located on Barksdale Field, it cannot impose a severance tax when the incidence of taxation, the severance of minerals from the soil, takes place on a federal enclave, outside the jurisdiction of the State of Louisiana." The Cocreham court, like the Waggonner court, recognized that Congress could allow a State to exercise jurisdiction to levy taxes within a federal enclave, as in the Buck Act. Cocreham, 382 F.2d at 937.

Thus, the exclusive jurisdiction of Congress, as set forth in Article I, Section 8, Clause 17 of the Constitution of the United States, may be modified by an Act of Congress. The Buck Act is such a modification.

The Buck Act was enacted by Congress in 1940 to enable the states to impose certain taxes including "income taxes" within federal enclaves. Section 106 of this Act reads as follows:

> Sec. 106. Same; income tax
>
> (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

> (b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

Sec. 110(c) of the Buck Act defines "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts."

Thus, the right is specifically granted to the State of Louisiana, as a taxing authority, to levy and collect a tax measured by the income from any party "receiving income from transactions occurring or services performed in such area . . . to the same extent and with the same effect as though such area was not a Federal area." See Howard v. Commissioners of the Sinking Fund of the City of Louisville, 344 U.S. 624, 627-629, 73 S.Ct. 465, 467-468, 97 L.Ed. 617, 621-622 (1953).

Therefore, we conclude that the State can impose a severance tax on the minerals severed from within the confines of Barksdale Air Force Base if the Louisiana Severance Tax is an "income tax," as defined in Sec. 110(c) of the Buck Act.

II.

Plaintiffs argue that the Cocreham case resolved the issue of whether the Louisiana Severance Tax was an income tax under the Buck Act.[4] The Cocreham court stated as follows:

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[4] Plaintiffs also argue that the Louisiana Constitution, Article VII, Sec. 4, differentiates between the income tax and the severance tax. However, we believe that this difference is of no consequence. The key is whether the tax is an income tax under federal law.

> The portion of the Buck Act on which the Collector relies provides that a state may levy an income tax in a federal enclave within the state to the same extent as if the area were not a federal enclave. 4 U.S.C.A. Sec. 106. The Act defines 'income tax' as 'any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.' 4 U.S.C.A. Sec. 110(c). The Louisiana severance tax is 'levied upon all natural resources severed from the soil . . . including . . . minerals such as oil [and] gas . . . ,' LSA-R.S. 47:631, and is measured by the quantity of minerals severed, LSA-R.S. 47:633. Congress has authorized the states to impose an income tax on private persons in federal enclaves, but the Louisiana severance tax is simply not an income tax. We are not free to expand the technical and precise language that Congress has used.
>
> Cocreham, 382 F.2d at 939-940.

The trial court determined that the amendment to paragraphs 7 and 8 of LSA-R.S. 47:633 by Acts 1973, Ex. Sess., No. 6, changed the severance tax on oil, distillates or other natural resources from a tax based on the quantity of the resource to a tax based on the value. The court concluded that with this amendment, the severance tax became an "income tax" within the meaning of the Buck Act, and did not infringe upon the exclusive rights of Congress to legislate for the federal enclave.

As noted by the court in Humble Oil and Refining Company v. Calvert, 478 S.W.2d 926 (Tex.1972), cert. denied, 409 U.S. 967, 93 S.Ct. 293, 34 L.Ed.2d 234, the broad definition of "income tax" contained in the Buck Act was intended by Congress:

> The Congressional intent is strongly stated in the bill's Senate Report where it is stated that '[t]his definition [of income tax] . . . must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or any other name) if it is levied on, with respect to, or measured by net income, gross income, or gross receipts.

Therefore, we agree with the trial court's determination that the amendment to the Louisiana Severance Tax rendered it an "income tax" within the meaning of the Buck Act. See Humble Oil and Refining Company v. Calvert, 464 S.W.2d 170, 175-176 (Tex. Civ. App. 1971).

Plaintiffs argue that if this court determines the Louisiana Severance Tax is an "income tax" under the Buck Act, the opinion of the trial court must be modified because it recognized that the severance tax on natural gas remained a volume-based tax.

The Louisiana legislature modified the provisions of paragraphs 7 and 8 of LSA-R.S. 47:633 to provide that the imposition of the Louisiana Severance Tax on oil and condensate would thereafter be based on a percentage of the value of the minerals severed at the time and place of the severance. However, no amendment was made to the provisions of paragraph 9 of LSA-R.S. 47:633, which sets forth the method of determining the amount of severance tax due on the severance of natural gas and its equivalents. Therefore, the severance tax on natural gas and its equivalents remains a volume-based tax.

However, because we find that the Louisiana Severance Tax may be imposed as a result of the 1976 amendment to the Mineral Leasing Act for Acquired Lands, this contention is without merit.

III.

Plaintiffs argue that the leases in question never came within the purview of the Mineral Leasing Act of 1920, or the Mineral Leasing Act for Acquired Lands of 1947, and therefore were not subject to the 1976 amendment to the Mineral Leasing Act for Acquired Lands.

The leases in the present case were granted under the express supervisory authority of the Secretary of the Interior, subject to various Public Land Orders.[5] These leases, entitled "Protective Lease of Oil and Gas Lands," were executed by the Director of the Bureau of Land Management. The Public Land Orders were issued as a result of an opinion of the United States Attorney General dated April 2, 1941. The Attorney General was of the opinion that "there was implied authority in the Executive branch to take protective measures in cases where lands acquired by the United States for a specific public purpose are found to contain oil which is being drained by adjoining owners – such lands not being subject to the Mineral Leasing Act of February 25, 1920." 40 Op. Att'y Gen. 41 (1941).

The Mineral Leasing Act of 1920, now codified in 30 U.S.C. Secs. 181-263, was designed to set the framework

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[5] Public Land Order No. 701 and 2178.

by which minerals underlying certain lands belonging to the United States could be mined. The Act itself indicated that its purpose was to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain. The Act also set forth the method by which deposits of certain minerals could be disposed of, and granted to the Secretary of the Interior the power to dispose of such minerals. The Act specifically did not apply to Appalachian Forest Act lands, lands in national parks and monuments, and lands withdrawn or reserved for military purposes.

This Act was amended in 1946 to provide that the mineral deposits owned by the United States and subject to the Act excluded (1) Appalachian forest lands, (2) lands in incorporated cities, towns or villages, (3) lands in national parks and monuments, (4) lands acquired under other Acts after February 25, 1920, and (5) lands within naval petroleum and oil shale reserves except as specifically provided for in the Act. The 1946 amendment to this Act deleted the specific reference to lands withdrawn or reserved for military purposes.

The Mineral Leasing Act for Acquired Lands, now codified in 30 U.S.C. Secs. 351-359, was first enacted in 1947. The purpose of this Act was to promote and encourage the development of ore, gas and other minerals on the acquired lands of the United States on a uniform basis under the jurisdiction of the Department of Interior. The Act was also intended to provide for the leasing of federal lands not theretofore subject to leasing under the Mineral Leasing Act of 1920. Section 8 of this Act, now 30 U.S.C. Sec. 357, provides as follows:

> Nothing contained in this Act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

As enacted, Section 3 of the 1947 Act, now 30 U.S.C. Sec. 352, provided that this Act applied to:

> . . . all deposits of coal . . . [and] oil . . . which are owned or may hereafter be acquired by the United States and which are within lands acquired by the United States exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws subject to the provisions hereof.

In 1976, Section 3 of this Act, now 30 U.S.C. Sec. 352, was amended. The amendment deleted the exclusion from the provisions of the Act of properties set apart for military or naval purposes.

The trial court concluded that the 1976 amendment to the Mineral Leasing Act for Acquired Lands should govern in the case of these corporate leases. The court noted that the power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened by this amendment. The trial court concluded that all of the disputed taxes were assessed after

the 1976 amendment to the Mineral Leasing Act for Acquired Lands, and the amendment applies to all Louisiana leases regardless of when the leases were executed.

After our review of the foregoing statutes, we find that the trial court was correct in its determination that the 1976 amendment to the Mineral Leasing Act for Acquired Lands is applicable to the leases in the instant case.

ISSUES

RECONVENTIONAL DEMAND

Plaintiffs' second set of issues addresses the trial court's supplemental reasons for judgment on defendant's reconventional demand. The trial court stated as follows:

> Stipulation number 32, submitted by defendant and the Suit Number 262,928 plaintiffs, provides that if the taxes are found by this Court to be owing for the period in dispute in the main demand, that the taxes owed for the period December, 1979 through September, 1982, the period addressed in the reconventional demand, are in the amount of $1,866,146.59 plus legal interest from judicial demand (12-29-82) until paid.

Plaintiffs contend that the trial court's award for the pre-October, 1982 period is erroneous because (1) it grossly misconstrues the precise words of Stipulation Number 32; (2) it fails to recognize and address the fact that the amendments to LSA-R.S. 52:1 in 1982 became effective as of September 10, 1982; (3) it did not address the fact that the change of position announced by the

Department under its letter dated September 30, 1982 indicates that the taxes will only be collected with respect to production subsequent to September, 1982; and (5) [sic] it failed to apply the doctrine of Contemporaneous Construction for all periods prior to the time that the Department announced its change of position as to the imposition of severance taxes on production from within the confines of a federal enclave.

Stipulation Number 32 provided as follows:

> Suit No. 262,928 Plaintiffs acknowledge that the value of the oil severed from the wells located on the Miss Murphy Lands and the Parcel 3 Lands during the months December 1979 through September 1982 was such that the Louisiana severance tax attributable thereto would have been $996,119.53 **if such production is held to be subject to taxation,** that the quantity of gas severed from the wells located on the Miss Murphy Lands and the Parcel 3 Lands during the months December 1979 through September 1982 was such that the Louisiana severance attributable thereto would have been $742,870.34 **if such production is held to be subject to taxation,** and that the value of the condensate severed from the wells located on the Miss Murphy Lands and the Parcel 3 Lands during the months December 1979 through September 1982 was such that the Louisiana severance tax attributable thereto would have been $127,156.72 **if such production is held to be subject to taxation,** all as is more particularly set forth on Exhibit "Q" attached hereto and made a part hereof. (Emphasis ours).

These consolidated cases were submitted to the trial court for decision upon the Joint Stipulation of Facts and briefs of the parties. Stipulation No. 32 clearly provides that taxes for this period are due "if such production is held to be subject to taxation," and the trial court so found. However, plaintiffs' arguments do not address whether the production for this period was subject to taxation. Rather, plaintiffs' arguments focus on whether defendant is in some way precluded from collecting these taxes because of their actions during the period in question. As such, we find that plaintiffs are bound by the wording of the stipulation. Therefore, plaintiffs' contentions are without merit.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Plaintiffs, Arkla, Inc., Pennzoil Producing Company, Arkla Exploration Company, Murphy Oil USA, Inc., and Total Minatome Corporation, are to equally pay their share of one-half of the costs of this appeal. Rosewood Resources, Inc. is to pay the remaining one-half of the costs of this appeal.

AFFIRMED.

APPENDIX B

SUPREME COURT OF LOUISIANA

No. 95-C-0565

MRT EXPLORATION COMPANY
MISSISSIPPI RIVER TRANSMISSION, ET AL

Versus

SHIRLEY MCNAMARA [sub nom RALPH SLAUGHTER]
SECRETARY,
LOUISIANA DEPARTMENT OF REVENUE

PER CURIAM

Granted in part. As to the reconventional demand, the lower courts misconstrued Stipulation No. 32, in which the parties stipulated to the values of the oil, the gas and the condensate severed between December 1979 and September 1982 and to the amount of taxes that would be owed "if such production is held to be subject to taxation."

The trial court misconstrued this stipulation to provide that the stipulated amounts of taxes were owed for the 1979-to-1982 period in the reconventional demand if the court found that taxes were owed in the period covered in the main demand. The court of appeal perpetuated this misconstruction by holding that the trial court found that taxes were owing for the 1979-to-1982 period. Thus, although the parties only stipulated to the amounts of taxes in the event the reconventional demand was meritorious, neither lower court passed on the merits of whether taxes in the stipulated amounts were actually owed for the 1979-to-1982 period.

Accordingly, we remand the matter to the court of appeal to make the determination of whether the production of oil, gas and condensate between December 1979 and September 1982 was subject to taxation. Otherwise, the application is denied.

WATSON, J., not on panel.

APPENDIX C

MRT EXPLORATION COMPANY, MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY OIL CORPORATION PENNZOIL PRODUCING COMPANY, TEXAS GAS EXPLORATION CORPORATION AND ARKLA, INC.	SUIT NO. 262,928 DIVISION "I"
VERSUS	19TH JUDICIAL DISTRICT COURT
SHIRLEY MCNAMARA (SUB NOM LEON TARVER, II), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA
ROSEWOOD RESOURCES, INC.	SUIT NO. 323,597, DIVISION "M"
VERSUS	19TH JUDICIAL DISTRICT COURT
SHIRLEY MCNAMARA (SUB NOM LEON TARVER, II), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

WRITTEN REASONS FOR JUDGMENT

ISSUE

The task this Court has before it is to characterize the Louisiana Oil and Gas Severance Tax, L.S.A.-R.S. 47:631 et seq, to determine if the imposition of that tax on minerals recovered by private entities from the ground beneath

Barksdale Air Force Base collides with the Supremacy Clause of the United States Constitution.

FACTS

The facts of these two consolidated cases are undisputed. The State of Louisiana, the City of Shreveport and the Bossier Levee District conveyed 22,000 acres located in Bossier Parish to the United States in 1930 for the construction of Barksdale Air Force Base. The Bureau of Land Management leased the mineral rights in the portion of the base known as the "Parcel 3 Lands" to Union Producing Company in 1961. Arkla, Inc., Arkla Exploration Company, Pennzoil Producing Company, Total Minatome Corporation and Murphy Oil USA, Inc. are the successors of Union Producing Company's rights. The Bureau leased rights in the property known as the "Miss Murphy USA Lease" to W. R. Stephens and Natural Gas and Oil Corporation. Arkla Exploration Co. and Murphy Oil USA, Inc., are the successors of the leasehold rights of W. R. Stephens and Natural Gas and Oil Corporation. These seven lessees are the plaintiffs in Suit Number 262,928.

The Bureau of Land Management leased the mineral rights in the property known as the "Parcel 1" and "Parcel 4" land to Shell Oil Company in 1961. Rosewood Resources, Inc., is the successor in interest of the leasehold rights of Shell Oil Company and is the plaintiff in Suit Number 323,597.

The State of Louisiana notified the Suit Number 262,928 plaintiffs that $38,535.37 was owed in accordance with L.S.A.-R.S. 47:631 as a tax on the severed oil and gas

for the period beginning October 1982. That amount was paid under protest pursuant to L.S.A.-R.S. 47:1576 and Suit Number 262,928 was filed for the recovery of that amount and all amounts paid since, which is in excess of $1,858,000.00

The State notified Rosewood Resources that oil and gas severance taxes in the amount of $123,772.65 for the period March, 1986 through June, 1987, were being assessed from Rosewood in connection with the Barksdale leases in accordance with L.S.A.-R.S. 47:631. Rosewood paid the assessment under protest on October 15, 1987. Suit Number 323,597 was then filed by Rosewood to recover those amounts plus the assessments paid from July, 1987 through the present, an amount in excess of $314,000.

Two federal court proceedings were instigated a week prior to the filing of the first state court action. The cases were dismissed based upon the Tax Injunction Act, 28 U.S.C. Sec. 1341 which denies Federal Court jurisdiction in a proceeding of this nature.

Appeals were taken to the Fifth Circuit in both cases and the dismissal was affirmed. The Court held in *MRT Exploration v. McNamara*, 731 F.2d. 260 (Ct. App. 5th Cir. 1984), that the Louisiana Department of Revenue and Taxation is taxing only the revenues of the plaintiffs and not the royalty going to the United States and that there is no reason why Louisiana should be any less free from federal interference in the administration or [sic] its own fiscal affairs because these plaintiffs extracted mineral, which came beneath federal lands. The Fifth Circuit then directed the matter to state courts for a determination of

the validity of the tax. *MRT Exploration*, 731 F.2d. at 264. This Court finds that the assessment is proper and orders plaintiffs suit dismissed.

The Louisiana Severance Tax is an "Income Tax" Under the Buck Act

At the onset, we recognize that this issue is not a new one in federal or state jurisprudence. Plaintiff argues that the question of the constitutionality of state taxation of minerals severed from a federal enclave was disposed of by the U.S. Fifth Circuit in *Mississippi Fuel Corporation v. Cockreham* [sic] 382 F.2d. 929 (U.S. Ct. App. 5th Cir. 1967), cert. denied, 390 U.S. 1014 20 L.Ed. 2d 164, 88 S.Ct. 1264, *on rehearing* 390 F.2d. 34 (U.S. Ct. App. 5th Cir. 1968). However, that case followed the decision of the Supreme Court in *Humble Pipe Line vs. Waggoner* [sic], 376 U.S. 269, 84 S.Ct. 857, 11 L.Ed. 782 (1964), in which the State of Louisiana was held unable to assess an ad valorem tax on personal items located within Barksdale. *Humble* dealt specifically with an ad valorem tax. The tax being assessed against these private entities is a tax upon the value of minerals extracted from the ground.

The legislature amended paragraphs 7 and 8 of L.S.A.-R.S. 47:633 by Acts 1973, Ex. Sess., No. 6, to change the severance tax on oil, distillates or other natural resources from a tax based on the quantity of the resource to a tax based upon its value. With this valuation method, the tax falls within the Congressionally authorized taxing power established in the Buck Act, 4 U.S.C.A. Sec. 105-110. We hold that the severance tax is an "income tax" within the meaning of the Buck Act.

The Buck Act was enacted by Congress to enable the states to impose certain taxes including "income taxes" within federal enclaves. "Income tax" is defined very broadly to mean "any tax levied on, with respect to, or measured by, net income, gross income or gross receipts." *Humble Oil and Refining Co. v. Calvert*, 478 S.W.2d. 926 (Tex. 1972) at 929. The Texas Supreme Court in *Humble* concluded that the Texas tax on the extraction of minerals based on the value of the minerals was within the meaning of the Buck Act. By calling the tax a severance tax or an income tax "begs the question."

Mississippi Fuel Corporation v. Cockreham [sic], supra, held that the Louisiana tax was "levied upon all natural resources severed from the soil . . . and is measured by the *quantity* of such minerals severed." *Mississippi River Fuel Corporation, supra,* at 940. That case is no longer dispositive of the characterization of the tax because of the change of the method of calculation of the tax from quantity based to value based.

Since the Buck Act grants to the states the power to tax the receipts of any individual within a federal area, the Louisiana tax is authorized and constitutional.

The Mineral Leasing Act for Acquired Lands as Amended in 1976 Applies to These Leases

This Court is also in accord with defendant's contention that the 1976 amendment to the Mineral Leasing Act for Acquired Lands (30 U.S.C. Sec. 351-359) should govern in the case of these corporate leases. Section 8 of that act provides:

> "Nothing in this act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property or assets of any lessee of the United States."

The power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened by an Act of Congress of August 4, 1976 (30 U.S.C.A. Sec. 352) which amended Section 3 by deleting the exception for land "set aside for military or naval purposes."

Plaintiffs' argument that the amended act cannot apply to them since the leases in question were created when the act excluded land used for military bases is not persuasive. Taxing authorities always may impose new taxes which affect existing contracts.

All of the disputed taxes were assessed after the amendment to The Leasing Act for Acquired Lands, 30 U.S.C.A. 352. As a matter of Louisiana law, the act as it currently is, applies to all Louisiana leases regardless of when the leases were executed.

CONCLUSION

The Louisiana General Severance Tax L.S.A.-R.S. 47:633, is a valid, enforceable tax under Louisiana law on the withdrawal of minerals from the earth below surface owned by the U.S. Government. There is no indication

that Congress ever intended private petroleum companies to benefit from the exclusion of federal land from state taxation by allowing them to escape a lawfully enacted tax. The constitutional authority and the machinery to thwart this taxation, if thought unacceptable, is available to Congress. *Commonwealth Edison v. Montana*, 453 U.S. 609, 101 S.Ct. 2946 69 SE2d. 884 (U.S 1981). (White, J., concurrance [sic]). There is no congressional legislation forbidding taxation of this income. Therefore, it is held that the Louisiana Severance Tax is valid and enforceable under Constitutional guidelines and Louisiana law.

Baton Rouge, Louisiana, this 18 day of January, 1990.

William H. Brown
Judge, 19th Judicial District Court

APPENDIX D

MRT EXPLORATION COMPANY, MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY OIL CORPORATION, PENNZOIL PRODUCING COMPANY, TEXAS GAS EXPLORATION CORPORATION, AND ARKLA, INC.	SUIT NO. 262,928 DIVISION "I" 19TH JUDICIAL DISTRICT COURT
VERSUS	PARISH OF EAST BATON ROUGE
SHIRLEY MCNAMARA (SUB NOM LEON TARVER, II), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	STATE OF LOUISIANA
ROSEWOOD RESOURCES, INC.	SUIT NO. 323,597, DIVISION "M"
VERSUS	19TH JUDICIAL DISTRICT COURT
SHIRLEY MCNAMARA (SUB NOM LEON TARVER, II), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

SUPPLEMENTAL WRITTEN REASONS FOR JUDGMENT

Stipulation number 32, submitted by defendant and the Suit Number 262,928 plaintiffs, provides that if the taxes are found by this Court to be owing for the period in dispute in the main demand, that the taxes owed for the period December, 1979 through September, 1982, the

period addressed in the reconventional demand, are in the amount of $1,866,146.59 plus legal interest from judicial demand (12-29-82) until paid. Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 21st day of January, 1990.

William H. Brown
JUDGE, 19th Judicial District Court

APPENDIX E

MRT EXPLORATION COMPANY, MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY OIL CORPORATION, PENNZOIL PRODUCING COMPANY, TEXAS GAS EXPLORATION CORPORATION AND ARKLA, INC.	NUMBER 262,928, DIVISION "I"
versus	
SHIRLEY McNAMARA (SUB NOM RALPH SLAUGHTER), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	19TH JUDICIAL DISTRICT COURT OF LOUISIANA IN AND FOR THE PARISH OF EAST BATON ROUGE
ROSEWOOD RESOURCES, INC.	NUMBER 323,597, DIVISION "M"
versus	
SHIRLEY McNAMARA RALPH (SUB NOM RALPH SLAUGHTER), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	19TH JUDICIAL DISTRICT COURT COURT OF LOUISIANA IN AND FOR THE PARISH OF EAST BATON ROUGE

JUDGMENT

This matter came on for trial on October 31, 1989 upon the facts set forth in the Joint Stipulation of Facts filed herein on that date. The Court, having considered the Joint Stipulation of Facts and the arguments advanced by counsel for the parties in the briefs filed herein, entered its Written Reasons For Judgment which was signed and filed on January 18, 1990, and its Supplemental Written Reasons For Judgment which was signed and filed herein on January 31, 1990. Plaintiff's Motion To Withdraw Supplemental Written Reasons For Judgment and For Reconsideration of Issues Addressed was denied. The Court is advised by the parties that the amount of one million eight hundred sixty-six thousand one hundred forty-six and 59/100 ($1,866,146.59) dollars set forth in the Supplemental Written Reasons For Judgment includes the sum of five hundred thirty-nine thousand eighty-two and 68/100 ($539,082.68) dollars which is the object of the reconventional demand in those separate proceedings (but related by subject matter) styled *Texas Gas Exploration Corporation v. Shirley McNamara, Secretary, Louisiana Department of Revenue and Taxation*, number 262,929 on the docket of this Court, and therefore the amount of one million eight hundred sixty-six thousand one hundred forty-six and 59/100 ($1,866,146.59) dollars set forth in the Supplemental Written Reasons for Judgment should actually be one million three hundred twenty-seven thousand sixty-three and 91/100 ($1,327,063.91) dollars. The parties have further advised the Court that Pennzoil Exploration and Production Company is now the obligor with respect to the interest of

Pennzoil Producing Company in these proceedings. Therefore,

IT IS ORDERED, ADJUDGED AND DECREED that the demands of the Plaintiffs in both of these consolidated proceedings are hereby rejected.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby rendered in favor of Plaintiff in reconvention in Docket Number 262,928, the Secretary of the Louisiana Department of Revenue and Taxation, and against the Defendants in reconvention, namely, Mississippi River Transmission Corporation, Arkla, Inc., Murphy Oil USA, Inc., TOTAL MINATOME CORPORATION and Pennzoil Exploration and Production Company, in the following amounts:

Mississippi River Transmission Corporation	$612,063.80
Arkla, Inc.	118,423.98
Murphy Oil USA, Inc.	162,670.66
TOTAL MINATOME CORPORATION	198,004.89
Pennzoil Exploration and Production Company	235,900.58

together with interest at the rates established under and pursuant to La. R. S. 47:1601 from the date such taxes were due until paid, which amounts of interest, through the date of entry of this judgment, are as follows:

Mississippi River Transmission Corporation	$1,106,394.70
Arkla, Inc.	215,060.57
Murphy Oil USA, Inc.	293,076.51
TOTAL MINATOME CORPORATION	359,581.27
Pennzoil Exploration and Production Company	428,400.65

and for all costs of those proceedings.

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff in Docket Number 323,597, namely Rosewood Resources, Inc., shall pay all costs of that proceeding.

Judgement read, ~~rendered~~ and signed in Baton Rouge, Louisiana on this the *15th* day of September, 1993.

/s/ William H. Brown
WILLIAM H. BROWN
Judge, 19th Judicial
District Court

APPROVED AS TO FORM IF JUDGMENT IS ENTERED ON OR BEFORE SEPTEMBER 30, 1993:

On behalf of Mississippi River Transmission Corporation, Arkla, Inc., Murphy Oil USA, Inc. and Rosewood Resources, Inc.

By: _____

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By: _____

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On behalf of TOTAL MINATOME CORPORATION

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On behalf of Ralph Slaughter, Secretary of the Louisiana Department of Revenue and Taxation

By: _____

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Counsel for the Secretary of the Louisiana Department of Revenue and Taxation

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APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

LEON TARVER II [*sub nom* Arnold A. Broussard], Secretary, Louisiana Department of Revenue and Taxation

versus

H. WAYNE WILSON, Trustee, GEORGE R. SCHURMAN and SCHURMAN OIL & GAS, INC.

CIVIL ACTION
NO. 90-0043
CHIEF JUDGE
TOM STAGG

MEMORANDUM OPINION

The issue in this bankruptcy appeal is whether the State of Louisiana may impose a severance tax on the resources extracted by a mineral lessee from the land within Barksdale Air Force Base in Bossier City, Louisiana. The bankruptcy judge held that it may not, denied the State's motion for summary judgment, and entered judgment in favor of the Trustee.

THE FACTS:

The underlying facts are not in dispute. By act of donation dated November 8, 1930, the City of Shreveport conveyed lands containing approximately 22,000 acres

located in Bossier Parish to the United States for a military post, flying field and bombing range. Pursuant to Act No. 4 of the 1930 legislative session the State donated its interest in the beds of the streams, lakes, bayous and lagoons lying within that tract to the United States. Similarly, the Board of Commissioners of the Bossier Levee District also conveyed its interests in certain other properties within that tract to the United States. Thus, by these acts of donation, the United States acquired a "fee simple title" to the entire tract.[1]

Not surprisingly, the soil beneath Barksdale had reservoirs of oil, gas and other minerals. Apparently, the United States government became concerned that it was losing substantial income as a result of the drainage by mineral lessees of adjoining land owners who were producing minerals from these reservoirs and from reservoirs of adjoining lands. Such concern resulted in an opinion by the Attorney General of the United States to the President that the lands which comprise Barksdale could be leased for mineral development.[2] Relying on this advice from the Attorney General, Presidents Franklin D. Roosevelt and Harry S. Truman issued executive

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[1] *See Humble Pipe Line Company v. Waggonner*, 376 U.S. 369, 370 (1964).

[2] Appellants' brief, Exhibit D. At this time, the only acts of Congress pertaining to the granting of oil, gas and mineral leases were those relating to Indian lands and domain lands. Of course, the lands comprising Barksdale were neither Indian lands nor domain lands.

orders authorizing the Secretary of the Interior to withdraw[3] or reserve lands of the United States for public purposes.

Pursuant to an act of Congress,[4] the Secretary of the Interior issued Public Land Orders, pertaining to Barksdale which (1) transferred jurisdiction over certain described Barksdale lands from the Department of the Air Force to the Department of Interior; (2) authorized action to prevent Barksdale mineral drainage; (3) prohibited use of Barksdale's surface areas needed by the Air Force; (4) authorized the Air Force to stipulate reservations and restrictions to be contained in the proposed Barksdale leases; and (5) required pre-clearance by the Air Force that any Barksdale mineral lease would not interfere with the primary use of the land as an Air Force base. Under the authority of these orders, oil, gas and mineral leases were issued by the Department of Interior. The lease at issue in this case is denominated "Protective Lease of Oil and Gas Lands Under Authority of Section 441, Revised Statutes: 5 U.S.C. 405" and dated February 1, 1961.[5] Pursuant to this document, the United States leased certain properties comprising Barksdale to Sinclair

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[3] "Withdrawal" is defined as transferring jurisdiction over an area of federal land from one department, *i.e.*, the United States Air Force, to another department, *i.e.*, the Department of Interior. *See* 43 C.F.R. § 2300.0-5(h).

[4] Now codified at 43 U.S.C. § 141, *et seq.*

[5] Appellants' Brief, Exhibit N.

Oil & Gas Company.[6] Through various operating agreements, the debtors, George R. Schurman and Schurman Oil & Gas, Inc. became the owners of certain leasehold rights in Parcel 2. During their period of operation of the lease, the debtors filed Louisiana Severance Tax Returns with the Louisiana Department of Revenue and Taxation, but indicated on the returns that the severed oil was exempt from taxation. The Department of Revenue and Taxation filed an Application for Payment of Administrative Expenses, asking the Bankruptcy Court to recognize the sum of $33,546.57, plus interest, due with respect to the oil severed from this property for the period August 1, 1985 through August 31, 1986. On December 5, 1989, the bankruptcy judge entered an opinion and order denying the Department's motion for summary judgment, and entering judgment for the debtors.

ANALYSIS OF LAW AND FACTS:

The applicable jurisprudence begins with the 1925 decision of the United States Supreme Court in *Mid-Northern Oil Company v. J. W. Walker*, 268 U.S. 45 (1925). That case involved a suit brought by an oil company to enjoin the enforcement of an annual license tax imposed by the State of Montana upon persons producing petroleum. The oil company argued that the Montana tax, as applied to it, was invalid, because the Company, by assignment of the original leases, was a lessee of the United States of public lands entered as homesteads but

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[6] This lease involved the particular tract of land that is known as "Parcel 2." *See* Appellees' Brief, Exhibit 1.

not yet granted by a patent, upon which it was engaged in prospecting for and producing crude petroleum under the provisions of the Leasing Act of February 25, 1920. The Company therefore argued that it was a governmental agency, means or instrumentality whose operations could not be taxed by the State.

The Supreme Court did not consider whether the Company, under its leases, was an agency, means or instrumentality of the United States because, in the Court's view, the Leasing Act of 1920 authorized the state taxation at issue. In so holding, the Court relied upon § 32 of the 1920 Act, which provided: "Nothing in this Act shall be construed or held to affect the rights of the states or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."[7] The Court rejected the contention that § 32 pertained to *existing* rights of the states, *i.e.*, rights existing when the 1920 Act was passed. According to the Court:

> [W]e find nothing in the body of the act which, by any stretch of meaning, purports to detract from or render less certain any such preexisting rights; and, in that view, the theory advanced fails for want of material upon which to operate. It fairly cannot be supposed that Congress would indulge in the altogether idle ceremony of enacting a law to save rights which, being in no way challenged or affected, stood in no need of being saved. The more natural view, and the one we adopt, is that Congress, having provided

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[7] 30 U.S.C. § 189.

> for leasing the public lands to private corporations and persons whose property, income, business and occupations ordinarily were subject to state taxation, meant by the proviso to say in effect that, although the act deals with the letting of public lands and the relations of the government to the lessees thereof, nothing in it shall be so construed as to affect the right of the States, in respect of such private persons and corporations, to levy and collect taxes as though the government were not concerned. In other words, the purpose of Congress was to remove altogether from the field of controversy, among other questions, the very questions which is here presented, and to put beyond doubt the authority of the states to impose taxes upon lessees in respect of their property, although arising from, and in respect of their taxable rights, although exercised under the act without regard to the origin thereof or to the interest of the United States in the lands or leases.

Mid-Northern Oil Company, supra, at 48-49.

The validity of state taxation pertaining to federal property was next addressed by the high court in the 1952 decision of *Howard v. Commissioners of the Sinking Fund of the City of Louisville,* 344 U.S. 624 (1953). That case involved a challenge to the validity of a Louisville, Kentucky, occupational tax or license fee ordinance as applied to employees of a naval ordnance plant located on federally-owned land. In a brief opinion, the Court upheld the tax relying on the Buck Act, 4 U.S.C. §§ 105, *et seq.* Section 106 of this Act provides:

> (a) No person shall be relieved from liability for any income tax levied by any State, . . , having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.
>
> (b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

Section 110(c) of the Buck Act defines income tax as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." The Court held that the tax authorized by the ordinance was an "income tax" within the meaning of the Buck Act. *Howard, supra,* at 629. According to the Court:

> The grant was given within the definition of the Buck Act, and this was for *any tax* measured by net income, gross income, or gross receipts. . . . By virtue of the Buck Act, the tax can be levied and collected within the federal area, just as if it were not a federal area. (Emphasis in original.)

Id. Justices Douglas and Black dissented, as they were unable to join in the Court's conclusion that the tax was an "income tax" within the meaning of the Buck Act. According to the dissenters, "Congress has not yet granted local authorities the right to tax the privilege of working for or doing business with the United States." *Id.*

The Louisiana Supreme Court addressed the identical issue presented herein in *Murphy Corp. v. Fontenot*, 225 La. 379, 73 So.2d 180 (1954).[8] Plaintiff in that case sought a refund of severance taxes paid under protest, contending that Article I, Section 8, Clause 17 of the United States Constitution gives the United States exclusive jurisdiction over lands involving Barksdale and, therefore, divested the State of Louisiana of its jurisdiction to collect severance taxes. Article I, Section 8, Clause 17 of the Constitution provides that:

> The Congress shall have Power . . .
>
> > To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; . . . .

According to the Court, the land on Barksdale subject to the lease at issue[9] was not used for the erection of a fort, magazine, arsenal, dock-yard or other needful buildings for military purposes. *Murphy, supra*, at 183. The Court provided that when the federal government

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[8] As will be discussed, *infra*, the *Murphy* decision is contrary to controlling Fifth Circuit precedent.

[9] The lease in *Murphy* is, for our purposes, identical to the lease at issue in the instant case.

granted to the private oil operators the right of exploration for their private commercial purposes, the government did not intend to take away from the donating state the right to collect severance taxes. *Id.* In so finding, the Court relied upon La. Rev. Stat. 52:1,[10] as well as the transferral of portions of the land from the Secretary of War to the Department of Interior. According to the Court, this withdrawal of land by the Secretary of War caused the property at issue no longer to be exempt from taxation, as the exemption only applied as long as the property was used for military purposes. *Id.* at 184.

In concluding that the State had the power to collect the taxes involved, the Court also cited 2(k) of the lease which required the lessee:

> To pay when due, all taxes lawfully assessed and under the laws of the State of the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; . . . .

Significantly, the Court recognized that the lease was *not* made under the Federal Leasing Act of 1920, but the Court noted that the lease itself, especially the paragraph

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[10] At the time, La. Rev. Stat. 52:1 read as follows:

> The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. *The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.* (Emphasis added.)

just mentioned, incorporated many provisions of that statute. According to the Court, to hold that a State was without power to collect the severance taxes, the Court would have to ignore the mandatory provisions of the contract. Justice Hawthorne dissented, arguing that since the United States is vested with exclusive jurisdiction pursuant to Article I, Section 8, Clause 17 of the Constitution, Louisiana was without authority to levy and collect the taxes in question.

The Barksdale tax issue was visited by the Fifth Circuit in *Mississippi River Fuel Corporation v. Fontenot*, 234 F.2d 898 (5th Cir. 1956). There, the Fifth Circuit affirmed the district judge's finding that: (1) the Louisiana Severance Tax is not a tax upon property but upon the privilege of severing natural resources from the soil, and in this case no part of the tax burden fell upon the federal government but was payable by the lessee who owned the working interest in the resource produced; (2) that the deeds by which the federal government acquired the title were donations and not sales, and the land did not fall within the purview of Article I, Section 8, Clause 17 of the Constitution, and that exclusive territorial jurisdiction was not ceded by the State of Louisiana to the federal government; and (3) under 2(k) of the lease, the lessees were obligated to pay the tax. The Fifth Circuit did not agree with appellant's contention that the severance tax represented an attempt on the part of the State to exercise legislative and executive jurisdiction over the lands comprising Barksdale Air Force Base. This was based upon

the court's view that the object and purpose of the general severance tax[11] and its effect is not to levy a tax upon the lands included in the base. *Fontenot, supra,* at 901. Instead, the tax was construed as applying not while the oil or gas is in the earth, but when it is severed from the earth. *Id.* At that point, Louisiana law obliges the person severing to file a statement of his business and to pay the tax. Having laid that groundwork, the Court restated the issue thusly:

> Whether a severer of oil and gas, who, if he had taken it from any other land in the state, would unquestionably be liable under the general laws of the state for the severance tax, can carve out of the fact, that it came from land which was a part of Barksdale Field, an exemption for himself against having to pay the tax on severing the oil and gas from the surface and appropriating it to his own use.

Id. at 902. The Court concluded that the tax provision in the lease must be construed so as to give it effect; thus, the operator cannot draw around himself a cloak of immunity because the United States is lessor, but must, as a part of the consideration for the lease and his obligation under the statute, pay the taxes which the severance tax statutes impose. *Id.*

At this point (the mid 1950s), it might appear that the issue presented in this case had been resolved in favor of the State. It clearly was, until the United States Supreme Court decision in *Humble Pipe Line Company v. Waggonner,* 376 U.S. 369 (1964). The issue posed in *Waggonner* was

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[11] La. Rev. Stat. 47:631-46.

"whether the United States has such exclusive jurisdiction over a 22,000-acre tract of land in Louisiana on which the Barksdale Air Force is located that Louisiana is without jurisdiction to levy an ad valorem tax on privately-owned property situated on the tract." *Id.* at 370. A Louisiana district court and the Louisiana Court of Appeal upheld the tax levied by the State on certain oil-drilling equipment and pipe lines owned, used and kept by the petitioners on the Base. The Louisiana Supreme Court denied review.

The United States Supreme Court reversed. The Court rejected the State's contention that Article I, Section 8, Clause 17 of the Constitution did not apply because the land for the military base was donated, not "purchased," within the meaning of that constitutional provision. On this point, the Court held that under Article I, Section 8, Clause 17, the United States acquired exclusive jurisdiction when the land was ceded to it with consent of the State (except for the State's express reservation as to civil and criminal process) just as if the United States had acquired its title by negotiation and payment of a money consideration. *Id.* at 372.

Contrary to the Fifth Circuit's pronouncement in *Fontenot, supra,* the Court placed no weight on the contractual provision in the lease requiring the lessee to "pay when due, all taxes lawfully assessed and levied. . . ." *Waggonner, supra,* at 374. Said the Court, "We see nothing more in this standard contractual provision than a precaution on the government's part to guard itself against liability for payment of any state taxes 'lawfully assessed'

against its lessee." *Id.* According to Justice Black, a contractual requirement to pay taxes lawfully owing, standing alone, cannot be read as manifesting the purpose of the government to abandoning exclusive jurisdiction over one of its important military enclaves. Significantly, he added, "When Congress has wished to allow a state to exercise jurisdiction to levy certain taxes within in a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. §§ 104-110." *Id.*

In light of the Supreme Court's decision in *Waggonner*, the Fifth Circuit in *Mississippi River Fuel Corporation v. Cocreham*, 382 F.2d 929, 937 (5th Cir. 1967), overruled its decision in *Mississippi River Fuel Corp. v. Fontenot*, discussed *supra*. According to *Cocreham*, the *Waggonner* decision overruled the two alternate grounds underlying the decision in *Fontenot*: (1) a provision of the contract requiring the Company to pay all taxes lawfully assessed; and (2) the severance tax did not interfere with the exclusive jurisdiction by the United States. According to the Fifth Circuit, the Supreme Court thereby reaffirmed a long line of decisions that a state may not legislate for a federal enclave "even if the legislation does not conflict with a regulation of Congress or interfere with a federal function or instrumentality." *Cocreham, supra*, at 937.

The Fifth Circuit also rejected the argument that *Waggonner* did not overrule *Fontenot*, because *Waggonner* involved an ad valorem tax while the earlier decision, like *Cocreham*, involved a severance tax. According to Judge Wisdom:

> While there are differences between the taxes involved, we think that [*Humble Pipe Line Company v. Waggonner*] did not rest on the peculiar

> attributes of the ad valorem tax. It rested instead on the general principle that a state lacks authority to levy any tax in an area under the exclusive jurisdiction of the United States. Just as the state could not tax personal property located on Barksdale Field, it cannot impose a severance tax when the incidence of taxation, the severance of minerals from the soil, takes place on a federal enclave, outside the jurisdiction of the State of Louisiana.

Id., at 938.

Most importantly, the Fifth Circuit also rejected the contention that Congress, in the Buck Act, retroceded to the State of Louisiana jurisdiction to levy the tax. The Buck Act provides that a state may levy an "income tax" in a federal enclave within a state to the same extent as if the area was not a federal enclave. 4 U.S.C. § 106. The Fifth Circuit held, however, that the Louisiana Severance Tax is "simply not an income tax." *Cocreham, supra*, at 940. Instead, the Court recognized that the Louisiana Severance Tax is levied upon all natural resources severed from the soil, including minerals such as oil and gas, and is measured by the quantity of minerals severed.[12]

According to the Court, "We are not free to expand the technical and precise language that Congress has used."

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[12] The Louisiana statute, as amended, now provides that the tax is measured by the *value* of the minerals severed. *See* La. Rev. Stat. 47:633(7).

Cocreham, supra. In a *per curiam* opinion, the Fifth Circuit panel in *Cocreham* denied a petition for rehearing.[13]

The trustee contends that the issue in this case was squarely resolved in its favor by the decisions in *Cocreham, supra.* The Court agrees. A more direct and specific pronouncement of the Fifth Circuit cannot be found. Nevertheless, appellant suggests that certain changes in the law since the decisions discussed above now require a different result. Specifically, appellant argues that the severance tax is now due and payable

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[13] *Mississippi River Fuel Corporation v. Cocreham,* 390 F.2d 34 (1968). Because of the importance of that decision to the issue in this case, the decision is quoted at length:

> *Humble Pipe Line Company v. Waggonner* [citation omitted] holds that the United States has exclusive jurisdiction over Barksdale Air Force Base. The fact that in [*Humble*] the tax in question was an ad valorem tax on pipe lines and equipment and not a severance tax, as in the cases now before the court, was irrelevant to the decision. Except with the consent of the United States, the State's taxing power cannot operate within the confines of a federal enclave. Here, the critical fact is that the incidence of taxation, the reduction of fugitive oil and gas to possession and ownership, takes place within the exclusive jurisdiction of the United States. The severance of the oil and gas is the subject of the tax; not the ownership.
>
> * * *
>
> The argument that in its sovereign capacity Louisiana has the power to impose a tax on the severance of oil and gas in the federal enclave collides with the Supremacy Clause. As [*Humble*] holds, a state may not legislate for a federal enclave within the exclusive legislative jurisdiction of Congress.

Id. at 35-36. Judge Rives dissented.

because: (1) the decision in *Commonwealth Edison Company v. Montana*, 453 U.S. 609 (1981) authorizes the State to levy and collect severance taxes; (2) the amendments[14] in 1983 to the Louisiana Severance Tax laws made the severance tax on oil an "income tax" so as to come within the meaning of the Buck Act; (3) a 1976 amendment to the 1947 Mineral Leasing Act for acquired lands[15] constitutes a retrocession to the State of Louisiana of the power to levy such severance taxes; and (4) an amendment in 1982 to La. Rev. Stat. 52:1 empowered the State to impose a severance tax on Barksdale production.[16] Although appellant makes compelling arguments regarding each of these issues, the court concludes that the decision of the bankruptcy judge is correct.

Appellants' least persuasive argument is that the recent Supreme Court decision of *Commonwealth Edison Company v. Montana, supra*, and its interpretation of § 32 of the 1920 Act, has changed the law that is to be applied in this case. The *Commonwealth Edison* case is clearly distinguishable. There, the Supreme Court upheld a severance tax imposed by the State of Montana on each ton of coal mined in the state, including coal mined on federal land, in spite of arguments that the tax violated both the Commerce Clause and Supremacy Clause of the United States Constitution. A careful reading of the case reveals no reference to exclusive federal jurisdiction set

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[14] La. Rev. Stat. 47:633(7), *supra* n. 11.

[15] 30 U.S.C. §§ 351, *et seq.*

[16] A Louisiana district judge adopted Arguments 2 and 3, above, in an opinion filed January 18, 1990. Appellants' Brief, Exhibit M.

forth in Article I, Section 8, Clause 17 of the Constitution because, apparently, no federal enclave was involved. Instead, the Court was dealing with federal land subject to the concurrent jurisdiction of the state and federal governments. The bankruptcy judge, therefore, correctly concluded that appellants' reliance on *Commonwealth Edison* is misplaced.

Appellant also argues[17] that the 1973 amendment to La. Rev. Stat. 47:633, changing the severance tax on oil and other natural resources from a measurement based upon quantity to a measurement based upon value, brings the severance tax at issue herein within the provisions of the Buck Act. For this proposition, appellant relies upon *Howard, supra*. This argument, however, was squarely rejected by the Fifth Circuit in *Cocreham*, where the Court held that, "The Louisiana Severance Tax is simply not an income tax." *Cocreham*, 382 F.2d at 940. Appellants' argument in this respect erroneously assumes, however, that the 1973 amendment to La. Rev. Stat. 52:1 brings the Louisiana Severance Tax on oil within the purview of the Buck Act. The court cannot believe that the change in the method for calculation of the amount of the tax on the oil severed from a quantity-based tax to a value-based tax alters the Fifth Circuit's conclusion that the tax is not an income tax. This seems clear, as the severance tax at issue is not levied upon any particular taxpayer, but rather upon the natural resources themselves.[18] Additionally, the severance tax is neither levied on nor measured by net income, gross income, or

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[17] *See* Appellants' Brief at 27-31.

[18] *See* La. Rev. Stat. 47:632.

gross receipts, as required by the Buck Act. Rather, it appears that the severance tax is not imposed upon income at all, but instead upon the increase in the value of one's property.[19] Accordingly, the court concludes that the severance tax in issue is not an "income tax" within the meaning of the Buck Act.[20] The court now turns to the appellants' contention that the 1976 amendment to the 1947 Mineral Leasing Act,[21] makes the Louisiana Severance Tax at issue applicable to this lease. Appellant argues that by this amendment, the full force and effect of 30 U.S.C. § 357 comes to bear on the issue herein. That section provides:

> Nothing contained in this chapter shall be construed to effect the rights of the state or other

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[19] It is well settled that a mere increase in the value of property is not income but merely an unrealized increase in capital. 1 *Mertens Law of Federal Income Taxation* §§ 5:01 and 5:07 (1987).

[20] The Texas Supreme Court's decision in *Humble Oil & Refining Company v. Calvert*. 478 S.W.2d 926 (Tex. 1972) is to the contrary. In that case, the Court held that an occupation tax on the business or occupation of producing oil and gas constituted an income tax within the meaning of the Buck Act. However, it appears that the Texas Court misconstrued the term "income tax". According to the Court:

> By calling the tax an occupation tax or a severance tax, or whatever else, begs the question. The purpose of the tax is to bring "income" to the state for revenue purposes. . . . Thus, irrespective of what the tax is called, if its purpose is to produce revenue, it is an income or a receipts tax under the Buck Act.

Id. at 175-76. It is submitted that under the Texas Court's decision, every tax is an "income tax" within the meaning of the Buck Act. This court cannot agree.

[21] *See* 30 U.S.C. § 352.

> local authorities to exercise any right which they may have with respect to properties covered by leases issued under this chapter, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

The trustee counters by arguing that the 1947 Act, and the amendments thereto, do not apply to this lease, because, as set forth on the face of the lease in question, the lease was granted under the supervisory authority of the Secretary of the Interior subject to the provisions of Public Land Orders No. 701 and 2178. As originally enacted, 30 U.S.C. § 352 excluded mineral deposits in acquired lands which were set apart for military or naval purposes. The 1976 amendment amended that section by striking out the exclusion for military or naval purposes.

The court seriously doubts whether the 1947 Act was ever intended to apply to the lease at issue.[22] Even so, the court finds that the Supremacy Clause prohibits the imposition of the severance taxes herein. Section 357 of the 1947 Act provides that the Act shall not be construed to affect the rights of a state to exercise "any right which they *may* have . . . . " (Emphasis added.) As of the date of the 1947 Act (as well as the 1976 amendment thereto), the State of Louisiana had absolutely no power to impose a tax upon the severance of minerals underlying Barksdale Air Force Base. Both the United States Supreme Court[23] and the United States Court of Appeals for the Fifth

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[22] As reflected in 30 U.S.C. § 358, the 1947 Act was intended to apply only to leases granted *prior* to its effective date.

[23] *Humble Pipe Line Company v. Waggonner,*

Circuit[24] specifically found that the State was without power to impose such taxes because the United States has exclusive jurisdiction over Barksdale Air Force Base pursuant to Article I, Section 8, Clause 17 of the Constitution. This difficult issue, therefore, is also resolved in favor of the trustee.

The only issue remaining is whether the 1982 amendment to La. Rev. Stat. 52:1[25] vested a power in the State of Louisiana to impose severance taxes upon Barksdale minerals. It seems clear that it did not. The jurisprudence indicates that subsequent developments in state law are not part of the laws of the ceded area unless. Congress takes action to keep them current. *See, e.g., Board of Supervisors of Fairfax County, Virginia v. United States,* 408 F. Supp. 556, 564 (E.D. 1976). Thus, the only laws that continue in effect are those state laws in effect at the time of the transfer of jurisdiction. Guided by this principle,

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[24] *Mississippi River Fuel Corporation v. Cocreham, supra.*

[25] As amended in 1982, La. Rev. Stat. 52:1 provides:

A. The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property.

B. The property shall be exempt from all taxation, assessment, or charge levied under authority of the State. *Nothing herein shall be construed or held to affect the rights of Louisiana or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon the severance of natural resources, or other rights, property, or assets of any lessee of the United States. . . .* (Emphasis added.)

the court concludes that the amendment in question is irrelevant to the issues now before the court.

CONCLUSION:

The bankruptcy judge correctly concluded that the State of Louisiana may not impose a severance tax on the resources extracted by a mineral lessee from the land within Barksdale Air Force Base. Despite a multi-faceted attack on the bankruptcy judge's reasoning and conclusion, and notwithstanding the checkered history of jurisprudence on minerals at Barksdale, no error of fact or law is found. The court has addressed what it perceives to be appellants' principal arguments for reversal.[26] However, this court believes that the Fifth Circuit's latest pronouncement on this issue forecloses any contrary ruling.[27] Accordingly, the bankruptcy judge's decision is AFFIRMED.

A judgment consistent with the terms of this Memorandum Opinion shall issue herewith.

THUS DONE AND SIGNED at Shreveport, Louisiana, this 22nd day of May, 1990.

Tom Stagg, Chief Judge

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[26] Appellants other arguments are without merit.

[27] *Cocreham, supra.*

APPENDIX G

Constitutional and Statutory Provisions

Mineral Leasing Act for Acquired Lands, Pub. L. No. 382, §§ 3, 8 and 9, 61 Stat. 907, 907, 909 (1947) (codified as amended at 30 U.S.C. §§ 352, 357 and 358).

Sec. 3. Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944 (50 U.S.C., sec. 1611 and the following), all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. The provisions of the Act of April 17, 1926 (44 Stat. 301), as heretofore or hereafter amended, shall apply to deposits of sulfur covered by this Act wherever situated. No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the

primary purposes for which they have been acquired or are being administered: *Provided*, That nothing in this Act is intended, or shall be construed, to apply to or in any manner affect any mineral rights, exploration permits, leases or conveyances nor minerals that are or may be in any tidelands; or submerged lands; or in lands underlying the three mile zone or belt involved in the case of the United States of America against the State of California now pending on application for rehearing in the Supreme Court of the United States; or in lands underlying such three mile zone or belt, or the continental shelf, adjacent or littoral to any part of the land within the jurisdiction of the United States of America.

Sec. 8. Nothing contained in this Act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

Sec 9. Nothing in this Act shall affect any rights acquired by any lessee of lands subject to this Act under the law as it existed prior to the effective date of this Act, and such rights shall be governed by the law in effect at the time of their acquisition; but any person qualified to hold a lease who, on the date of this Act, had pending an application for an oil and gas lease for any lands subject to this Act which on the date the application was filed was not situated within the known geologic structure of a producing oil or gas field, shall have a preference right over others to a lease of such lands without competitive bidding. Any person holding a lease on lands subject

hereto, which lease was issued prior to the effective date of this Act, shall be entitled to exchange such lease for a new lease issued under the provisions of this Act, at any time prior to the expiration of such existing lease.

The Federal Coal Leasing Amendments Act of 1975, Pub. L. No. 94-377, § 12, 90 Stat. 1083, 1090 (1976) (codified as amended at 30 U.S.C. § 352).

Sec. 12. (a) Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) is amended by striking out "(b) set apart for military or naval purposes, or (c)" and insert in lieu thereof "or (b)".

(b) Such section 3 is further amended by inserting the following after the first sentence thereof: "Coal or lignite under acquired lands set apart for military or naval purposes may be leased by the Secretary, with the concurrence of the Secretary of Defense, to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.".

Buck Act, Pub. L. No. 819, §§ 2(a) and 6(c), 54 Stat. 1059, 1060 (1940) (codified as amended at 4 U.S.C. § 106(a) and § 110(c)).

Sec. 2. (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a

Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

Sec. 6. (c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

Constitution of the State of Louisiana of 1921, Article X:

§ 1. Taxing power; specific taxes

* * *

Income taxes. Equal and uniform taxes may be levied upon net incomes, and such taxes may be graduated according to the amount of the net income. Public officials shall not be exempted. Reasonable exemptions may be allowed.

§ 21. Severance tax on natural resources

Section 21. **Levy; rate; allocation to parishes.** Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance; but such tax on sulphur shall not exceed One Dollar and Three Cents ($1.03) per long ton of 2,240 pounds, provided that the present severance tax on sulphur shall be, and is, hereby fixed at One Dollar and Three Cents ($1.03) per long ton of 2,240 pounds, effective as of the twentieth day after the present Legislature shall have adjourned, and shall be collected and expended in accordance with existing laws for the collection of severance taxes on natural resources. Such

natural resources may be classified for the purpose of taxation and such taxes may be predicated upon either the quantity or value of the products at the time and place of severance. No severance tax shall be levied by any Parish or other local subdivision of the State.

* * *

Constitution of the State of Louisiana of 1974, Article VII:

§ 4. Income Tax; Severance Tax; Political Subdivisions

Section 4. **(A) Income Tax.** Equal and uniform taxes may be levied on net incomes, and these taxes may be graduated according to the amount of net income. However, the state individual and joint income tax schedule of rates shall never exceed the rates set forth in Title 47, Section 32 of the Louisiana Revised Statutes on January 1, 1974. Federal income taxes paid shall be allowed as a deductible item in computing state income taxes for the same period.

(B) Severance Tax. Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Natural resources may be classified for the purpose of taxation. Such taxes may be predicated upon either the quantity or value of the products at the time and place of severance. No further or additional tax or license shall be levied or imposed upon oil, gas, or sulphur leases or rights. No additional value shall be added to the assessment of land by reason of the presence of oil, gas, or sulphur therein or their production therefrom. However, sulphur in place shall be assessed for ad valorem taxation to the person, firm, or corporation having

the right to mine or produce the same in the parish where located, at no more than twice the total assessed value of the physical property subject to taxation, excluding the assessed value of sulphur above ground, as is used in sulphur operations in such parish. Likewise, the severance tax shall be the only tax on timber; however, standing timber shall be liable equally with the land on which it stands for ad valorem taxes levied on the land.

Louisiana Revised Statutes, Title 47:

§ 31. Individuals, corporations and trusts subject to tax

There shall be levied, collected, and paid for each taxable year a tax upon the net income of residents and nonresidents, estates, trusts and corporations, as hereinafter provided.

(1) Resident individuals. Every Person residing within the state, or the personal representative in the event of death, shall pay a tax on net income from whatever source derived, except as hereinafter exempted.

Every natural person domiciled in the state, and every other natural person who maintains a permanent place of abode within the state or who spends in the aggregate more than six months of the taxable year within the state, shall be deemed to be a resident of this state for the purpose of determining liability for income taxes under this Chapter.

(2) Nonresident individuals. Every nonresident shall pay a tax upon such net income as is derived from property located, or from services rendered, or from business transacted within the state, or from sources within the state, except as hereinafter exempted.

(3) Corporations. Corporations shall be taxed on net income from sources within the state, as hereinafter set out.

(4) Domestic real estate investment trusts. Trusts shall be taxed on net income from whatever source derived, except as otherwise exempted.

(5) Foreign real estate investment trusts. Foreign real estate investment trusts shall be taxed on net income from sources within the state, as hereinafter set out.

§ 631. Imposition of tax

Taxes as authorized by Section 21 of Article X of the Constitution of Louisiana[1], are hereby levied upon all natural resources severed from the soil or water, including all forms of timber, including pulp woods, and turpentine and other forest products; minerals such as oil, gas, natural gasoline, distillate, condensate, casinghead gasoline, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells and other natural deposits; and the salt content in brine.

§ 632. Taxes payable by owners; lien and privilege created

A. These taxes shall be paid by the owner or proportionately by the owners thereof at the time of the severance and become due and exigible monthly, as herein provided; they shall operate as a first lien and privilege on the natural resources which lien and privilege shall follow the natural resources into the hands of

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[1] The cited provision is from the 1921 Constitution. See, now Article 7, § 4 of the 1974 Constitution.

third persons whether in good or bad faith, and whether the same be found in a manufactured or unmanufactured state. In addition, oil and gas leases, interests and minerals, mineral rights, royalty interests, timber contracts, and rights of any kind to the ownership of any natural resource severed from the soil or water, shall be subject to seizure and sale for the payment of the tax levied in this Part in preference to all other claims, liens, and privileges.

B. These taxes shall not be due or owed by any political subdivision of the state if the natural resource severed was owned and severed by that political subdivision for its own use.

§ 633(7)(a) [As in effect prior to 1973 amendment]. Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity severed and shall be paid at the following rates:

* * *

(7)(a) On oil of 22 gravity and below, eighteen cents per barrel of 42 gallons.

(b) On oil above 22 gravity and not above 28 gravity, twenty cents per barrel of 42 gallons.

(c) On oil above 28 gravity and not above 31 gravity, twenty-one (21¢) cents per barrel of 42 gallons.

(d) On oil above 31 gravity and not above 32 gravity, twenty-two and one-half cents per barrel of 42 gallons.

(e) On oil above 32 gravity and not above 36 gravity, twenty-four and one-half cents per barrel of 42 gallons.

(f) On oil above 36 gravity and not above 43 gravity, twenty-five cents per barrel of 42 gallons.

(g) On oil above 43 gravity, twenty-six cents per barrel of 42 gallons.

(h) Where the liquid hydrocarbons produced by a well consist of oil only and it is determined by the collector of revenue that such well is incapable of producing an average six barrels of oil per day, the tax rate applicable to the oil severed from such well shall be one-half of the schedule set forth in this paragraph (7).

§ 633(7)(a) [As in effect after 1973 amendment]. Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity or value of the products or resources severed and shall be paid at the following rates:

* * *

(7)(a) On oil twelve and one-half percentum of its value at the time and place of severance. Such value shall be the higher of (1) the gross receipts received from the first purchaser, less charges for trucking, barging and pipeline fees, or (2) the posted field price. In the absence of an arms length transaction or a posted field price, the value shall be the severer's gross income from the property as determined by R.S. 47:158(C).

* * *

§ 633(8) [As in effect prior to 1973 amendment]. Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity severed and shall be paid at the following r tes:

* * *

(8) On distillate, condensate, or similar natural resources severed from the soil or water either with oil or gas, twenty cents per barrel of 42 gallons; natural gasoline, casinghead gasoline and other natural gas liquids, butane, propane, ethane, or methane recovered through processing gas after separation of oil, distillate, condensate or similar natural resources shall be taxed as gas under subsection (9) below based on equivalent gas volumes; provided that, for the purpose of the levy of this tax, measurement of such natural resources taxable under this paragraph may be made at or near the mouth of the well, or at the place where the resources taxed by this paragraph are ultimately separated or removed from the oil or gas, all measurements being made under rules and regulations to be promulgated by the collector of revenue.

§ 633(8) [As in effect after 1973 amendment]. Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity or value of the products or resources severed and shall be paid at the following rates:

* * *

(8) On distillate, condensate, or similar natural resources severed from the soil or water either with oil or

gas, twelve and one-half percentum of gross value at the time and place of severance. For the levy of this tax, gross value shall be defined by R.S. 47:633(7)(a). However, natural gasoline, casinghead gasoline and other natural gas liquids, including but not limited to ethane, methane, butane or propane, all of which occur naturally or which are recovered through processing gas after separation of oil, distillate, condensate, or similar natural resources shall not be subject to the levy provided for in this Paragraph, but shall be subject to the levy provided for in R.S. 47:633(9).

§ 633(9). Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity or value of the products or resources severed and shall be paid at the following rates:

* * *

(9) On natural gas and, based on equivalent gas volumes, natural gasoline, casinghead gasoline, and other natural gas liquids, including but not limited to ethane, methane, butane or propane, seven cents per thousand cubic feet, measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of sixty degrees Fahrenheit; provided that whenever the conditions of pressure and temperature differ from the above bases, conversion of the volume from these conditions to the above bases shall be made in accordance with the Ideal Gas Laws with correction for deviation from Boyle's Law, which correction must be made unless the pressure at the point of measurement is two hundred pounds per square inch gauge, or less, all in accordance

with methods and tables generally recognized by and commonly used in the natural gas industry. For all purposes of computing standard cubic feet of gas under this Section the barometric pressure shall be assumed to be 14.7 pounds per square inch absolute at the place of measurement.

* * *

1892 La. Acts No. 12.

1. The United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

2. The United States may enter upon and occupy any land which may have been or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation.

(2)

No. 95-286

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

versus

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. May the State of Louisiana, through its Department of Revenue and Taxation, impose a Louisiana Severance Tax, LA. R.S. 47:631, *et seq.*, on the natural resources extracted by a mineral lessee during the taxable period January 1, 1980 through February 28, 1986, from the surface of the earth, the ground location of which lies within Barksdale Air Force Base Acquired Lands of the United States of America, the jurisdiction concerning which is vested in the Department of the Interior?

2. Is the State of Louisiana's collection of a severance tax on the natural resources extracted by a mineral lessee within a federal enclave (Barksdale) violative of Article 1, Section 8, Clause 17, of the Constitution of the United States of America?

3. Is Louisiana's severance tax a tax "levied on, with respect to, or measured by, net income, gross income, or gross receipt" within the meaning of The Buck Act, 4 U.S.C. §§106(a) and 110(c)?

PARTIES

The Petitioners' listing of the parties to the proceeding is correct; however, the name of the Secretary, Department of Revenue and Taxation for the State of Louisiana, is the Honorable Ben Morrison.

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No. 95-286

In The

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

versus

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, BEN MORRISON, SECRETARY OF THE DEPARTMENT OF REVENUE AND TAXATION, STATE OF LOUISIANA [hereinafter the "Department"], respectfully requests that this Court deny the Petition for a Writ of Certiorari seeking relief from the Opinion of the Court of Appeal, First Circuit, State of Louisiana, in this case. That Opinion is reported at 648 So.2d 1108 (1994) and has been reproduced in Petitioners' Appendix A at Pages 1a through 16a.

COURSE OF THESE PROCEEDINGS BELOW

Two tax refund suits were filed by Petitioners in the court of original jurisdiction, the 19th Judicial District Court for the Parish of East Baton Rouge, Louisiana. They were subsequently consolidated and tried.

The Question Presented to the Trial Court for resolution was:

> May the State of Louisiana, through its Department of Revenue and Taxation, impose a Louisiana Severance tax, LA. R.S. 47:631, *et seq.*, on the natural resources extracted by a mineral lessee during the taxable period December, 1979 through the date of final judgment herein, from the surface of the earth, the ground location of which lies within Barksdale Air Force Base Acquired Lands of the United States of America, the jurisdiction concerning which is vested in the Department of the Interior?

ACTION IN THE COURT OF ORIGINAL JURISDICTION, THE NINETEENTH JUDICIAL DISTRICT COURT, EAST BATON ROUGE PARISH, LOUISIANA

The District Court, Honorable William H. Brown, Presiding Judge, determined that: (1) The Louisiana Severance Tax is an "Income Tax" under the Buck Act [4 U.S.C. §§105-110]; and (2) The Mineral Leasing Act for Acquired Lands as amended in 1976 [30 U.S.C. §§351 *et seq.*] applies to these [Barksdale] leases, and concluded that:

> The Louisiana General Severance Tax L.S.A.-R.S. 47:633, is a valid, enforceable tax under Louisiana law on the withdrawal of minerals from the earth below surface owned by the U.S. Government. There is no indication that Congress ever intended private petroleum companies to benefit from the exclusion of federal

> land from state taxation by allowing them to escape a lawfully enacted tax. The constitutional authority and the machinery to thwart this taxation, if thought unacceptable, is available to Congress. *Commonwealth Edison v. Montana*, 453 U.S. 609, 101 S.Ct. 2946, 69 L. Ed. 2d 884 (U.S. 1981). (White, J. concurrance[sic]). There is no congressional legislation forbidding taxation of this income. Therefore, it is held that the Louisiana Severance Tax is valid and enforceable under Constitutional guidelines and Louisiana Law.

MRT Exploration Company, et al v. McNamara; Rosewood Resources, Inc. v. McNamara, No. 262,928 Div. I and 323,597 Div. M (19th Judicial District Court, Parish of East Baton Rouge, Louisiana, January 18, 1990) unreported. Petitioners' Appendix C, Pages 19a through 25a.

ACTION IN THE INTERMEDIATE APPELLATE COURT THE COURT OF APPEAL FOR THE FIRST CIRCUIT

The Court of Appeal affirmed the trial court's decision that the tax was valid and enforceable, stating:

> As noted by the court in **Humble Oil and Refining Company v. Calvert**, 478 S.W.2d 926 (Tex. 1972), *cert. denied*, 409 U.S. 967, 93 S.Ct. 293, 34 L. Ed. 2d 234, the broad definition of "income tax" contained in the Buck Act was intended by Congress:
>
> > The Congressional intent is strongly stated in the bill's Senate Report where it is stated that "[t]his definition [of income tax] . . . must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-

franchise tax, or business-privilege tax, or any other name) if it is levied on, with respect to, or measured by net income, gross income, or gross receipts."

Therefore, we agree with the trial court's determination that the amendment to the Louisiana Severance Tax rendered it an "income tax" within the meaning of the Buck Act. *See* **Humble Oil and Refining Company**, 464 S.W.2d 170, 175-176 (Tex. Civ. App. 1971).

Plaintiffs argue that if this court determines the Louisiana Severance Tax is an "income tax" under the Buck Act, the opinion of the trial court must be modified because it recognized that the severance tax on natural gas remained a volume-based tax.

The Louisiana legislature modified the provisions of paragraph 7 and 8 of LSA-R.S. 47:633 to provide that the imposition of the Louisiana Severance Tax on oil and condensate would thereafter be based on a percentage of the value of the minerals severed at the time and place of the severance. However, no amendment was made to the provisions of paragraph 9 of LSA-R.S. 47:633, which sets forth the method of determining the amount of severance tax due on the severance of natural gas and its equivalents. Therefore, the severance tax on natural gas and its equivalents remains a volume-based tax.

However, because we find that the Louisiana Severance Tax may be imposed as a result of the 1976 amendment to the Mineral Leasing Act for Acquired Lands, this contention is without merit.

* * * *

The trial court concluded that the 1976 amendment to the Mineral Leasing Act for Acquired Lands should govern in the case of

> these corporate leases. The court noted that the power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened by this amendment. The trial court concluded that all of the disputed taxes were assessed after the 1976 amendment to the Mineral Leasing Act for Acquired Lands, and the amendment applies to all Louisiana leases regardless of when the leases were executed.
>
> After our review of the foregoing statutes, we find that the trial court was correct in its determination that the 1976 amendment to the Mineral Leasing Act for Acquired Lands is applicable to the leases in the instant case.

MRT Exploration Company, et al. v. McNamara; Rosewood Resources, Inc. v. McNamara, 94 0063, 94 0064 (La. App. 1 Cir. 12/29/94), 648 So.2d 1108, *rehearing denied* (1995). Petitioners' Appendix A, Pages 1a through 16a.

An Application in the Court of Appeal for a Rehearing was denied. Petitioners' Appendix A, Page 1a.

ACTION IN THE SUPREME COURT OF LOUISIANA

The Supreme Court of Louisiana denied Petitioners' Application for a Writ of Certiorari. *MRT Exploration Company Mississippi River Transmission, et al. v. Shirley McNamara [sub nom Ralph Slaughter] Secretary, Louisiana Department of Revenue*, 654 So.2d 1083 (La. 1995).[1]

---

[1] A remand was ordered by the Supreme Court of Louisiana for a reason not pertinent here, i.e. the taxable period from 1979 - to - 1982 as governed by a Reconventional Demand. This limited remand has been set for Argument before the Louisiana Court of Appeals for the First Circuit on September 18, 1995. The outcome of that Hearing will not be determinative of any issues posed for consideration by this Court.

JURISDICTION

The jurisdiction of this Court was timely invoked by the Petitioners pursuant to 28 U.S.C. §1257.

THE UNDERLYING FACTS

After four years of intense political lobbying effort therefor, on December 4, 1928, Shreveport, Louisiana, was selected as the new home of the Third Air Attack Group, Army Air Service, which had theretofore been located at Galveston, Texas. Where an aerodrome was to be located immediately became of pressing importance. Various locations within Caddo Parish, Louisiana, where Shreveport is located, were entertained, considered and eventually rejected by the Secretary of War and his staff for various reasons. However, a suitable location was agreed upon in the adjoining Parish of Bossier.

Since the funding for the acquisition of the property at the selected location was to consist of monies derived from a bond issue approved by the Shreveport, Louisiana populace, and because the laws of Louisiana failed to accommodate a transaction whereunder a city in one parish could expropriate property lying in another parish, a series of statutory provisions were approved. The first of these was Louisiana Acts 1928, No. 43 which, upon a popular vote thereof, amended Louisiana's Constitution, Article IV, Section 12 of the [1921] Constitution. This Constitutional provision became the cession provision for the donation by the State of a political subdivision thereof to the United States of lands in connection with, in pertinent part, the use "**as airports, flying fields, landing fields,. . . . military posts, and for military uses.**" *See* **Appendix C-1.** In the same Session of the Louisiana Legislature, Louisiana Acts 1928, No. 24 was passed. This Act [in pertinent part] permitted municipalities and police juries to expropriate, and thereafter donate to the United States of America, any property

which they might own, for use as "**airports, flying fields, landing fields,. . . . bombing ranges, military posts,. . . . and for other military purposes.**" *See* **Appendix C-2.**

It was immediately discovered that this provision would not accommodate Shreveport's needs because, by its express terms, it was limited to properties lying within Shreveport or Caddo Parish. Louisiana Acts 1928, Extra Session No. 5, corrected this oversight concerning the ownership of properties to be used for "**airports, flying fields, landing fields,. . . . bombing ranges, military posts,. . . . and for other military purposes.**" *See* **Appendix C-2.** Having thus authoritatively vested Shreveport and Caddo Parish with such authorization, by Louisiana Acts 1930, No. 4, the State of Louisiana itself authorized the donation of water beds whether navigable or non-navigable to the United States of America for [in pertinent part] "**an air port[sic], flying field, land,[sic] field, military post and for military purposes.**" *See* **Appendix C-3.** Thereafter, Louisiana Acts 1940, No. 75 enabled and ratified authority for the State of Louisiana or any of its political subdivisions to donate property to the United States for [in pertinent part] "**(4) Airports, flying fields, landing fields,. . . . military posts and for any military purposes.**" *See* **Appendix C-4.** When the Louisiana Legislature revised its Statutes in 1950, Louisiana Acts 1940, No. 75 became LA. R.S. 52:2. *See* **Appendix C-6.**

All of the "Special" Barksale Statutory Provisions, in pertinent part, are compiled and reproduced at **Appendix C-7.** The purpose of that compilation is to negate the Petitioners' suggestion to this Court that the cession provision for the acquisition of Barksdale was governed by Louisiana Acts 1892, No. 12 §§1 and 2, as amended by Louisiana Acts 1942, No. 31, §1 and as carried into the Revised Statutes of 1950 as LA.R.S. 52:1.

The area determined by the Secretary of War to be suitable for an aerodrome embraced an area approximately five miles wide and nine and one-half miles long.

The airfield was to cover 21,705 acres of land, and was to be located in Bossier Parish, some three and one-half miles from Shreveport. The land was acquired by the City of Shreveport and donated to the United States of America on November 8, 1930, as accepted on November 18, 1930 by Patrick J. Hurley, the Secretary of War, for and on behalf of the United States of America for "**a military post, flying field and bombing range.**" Two additional donations were made, one by the State of Louisiana consisting of "all of the beds of the streams, lakes, bayous and lagoons, whether navigable or non-navigable, lying within . . . " (the area donated by Shreveport) on August 30, 1930, as accepted on November 18, 1930 by Patrick J. Hurley, the Secretary of War, for and on behalf of the United States of America for "**an airport, flying field, landing field, military post and military uses,**" and the other by the Board of Commissioners of the Bossier Levee District consisting of property within the same locale on the 5th day of February, 1930 as accepted on November 18, 1930 by Patrick J. Hurley, the Secretary of War, for and on behalf of the United States of America for "**a military post, flying field and bombing range.**" The Secretary of War had been authorized by Congress to accept these donations. *See* the Barksdale Congressional Acts February 25, 1929, 45 Stat. 1304 [this Act has not been codified], **Appendix B-1**, and July 1, 1930, 46 Stat. 843 [this Act has not been codified]**Appendix B-1**. The property became known as Barksdale Field (heretofore and hereafter "Barksdale"), then the largest airfield in the world.

The United States Government soon realized that it was losing substantial income as a result of the drainage by mineral leases of adjoining land owners who were producing oil, gas and other minerals from reservoirs located both beneath Barksdale and its adjoining lands. At this time the only Acts of Congress pertaining to the granting of oil, gas and mineral leases were those relating to "**Indian lands**" (Act of June 28, 1906 [34 Stat. 543, 25

U.S.C. §396b]); Act of May 27, 1908 [35 Stat. 312. This Act has not been codified.]; Act of March 3, 1909 [35 Stat. 783, 25 U.S.C. §396]; Act of August 21, 1916 [39 Stat. 519. This Act has not been codified.]; and Act of May 11, 1938 [52 Stat. 347, 25 U.S.C. §§396a-396b]) and "**Domain lands**" (The Mineral Leasing Act of 1920 [Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. §§181 *et seq.*]). The lands comprising Barksdale were neither Indian lands nor Domain lands. Since both of such lands, whether Indian or Domain, could be leased under the auspices of the United States Department of the Interior, the question was posed at a Presidential cabinet meeting why Barksdale type lands, which were Acquired lands, could not be leased for mineral development under similar lease forms, rules and regulations, etc., as these other type lands, primarily the Domain lands.

In furtherance of the desirability of the prevention of drainage, the Attorney General of the United States issued an Opinion to the President that such lands could be leased. "Authority to Protect Oil Deposits Against Drainage." 40 Op.A.G. 41. **Appendix Page E-1**

In relying on this advice from the Attorney General of the United States, President Franklin D. Roosevelt, issued Executive Order 9146, "Authorizing the Secretary of the Interior to Withdraw and Reserve Public Lands." 7 F.R. 3067. **Appendix Page F-1**. The following year, President Roosevelt issued Executive Order 9337, which superseded Executive Order 9146, "Authorizing the Secretary of the Interior to Withdraw and Reserve Lands of the Public Domain and Other Lands Owned or Controlled by the United States." 8 F.R. 5516. **Appendix Page F-2.** In furtherance of advice rendered by the Attorney General of the United States, President Harry S. Truman issued Executive Order 10355 which superseded Executive Order 9337 "Delegating to the Secretary of the Interior the Authority of the President to Withdraw or Reserve

Lands of the United States for Public Purposes." 17 F.R. 4831. **Appendix Page F-3.**

As used in these Executive Orders and the Public Land Orders, "Withdrawal" is defined as transferring jurisdiction over an area of federal land from one Department (the Air Force) to another Department (Interior). 43 CFR §2300.0-5 (h).

Pursuant to a 1910 Act of Congress (codified as 43 U.S.C. §141, *et seq.*) the Secretary of the Interior issued four Public Land Orders – Public Land Order 701, **Appendix G-1**, Public Land Order 884, **Appendix G-4**, Public Land Order 1807, **Appendix G-7**, and Public Land Order 2178, **Appendix G-9**, pertaining to Barksdale, each of which (a) transferred jurisdiction over certain described Barksdale lands from the Department of the Air Force to the Department of the Interior; (b) authorized action to prevent Barksdale (mineral) drainage; (c) authorized the Air Force to stipulate reservations and restrictions to be contained in the proposed Barksdale leases; and (d) required preclearance by the Air Force before any Barksdale (mineral) lease could be issued that would interfere with the primary use of the Barksdale Air Force Base. The first Public Land Order, 701, and the fourth Public Land Order, 2178, relate to the demised premises of the mineral leases involved in this litigation.

Under the authority of these Executive Orders and Public Land Orders, which transferred jurisdiction over certain described Barksdale land from the Department of the Air Force to the Department of the Interior, and after the four prong test required by these Public Land Orders had been met, the Bureau of Land Management, represented by the Secretary of the Interior, granted the following oil, gas and mineral leases pertinent here:

Number	Effective Date	Lessee
BLM-A-024527	August 1, 1951	W.R. Stephens, III and National Gas and Oil Corporation
BLM-A-054489	February 1, 1961	Shell Oil Company
BLM-A-054490	February 1, 1961	Shell Oil Company
BLM-A-054491	February 1, 1961	Union Producing Company

These leases [now held by Petitioners] are at issue in this litigation. In pertinent part, each of these four leases provided, in Sec. 2(k) thereof:

> (k) Taxes and wages – Freedom of purchase. – To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

All of the demised premises in these leases were within the area where jurisdiction was transferred from the Department of the Air Force to the Department of the Interior, and none of the demised premises were located within the area for which use was required by Barksdale and invasion was prohibited.

As to each well subsequently drilled on the demised premises of these leases, the following events occurred:

1. The Department of the Interior was notified of each such proposal, so that the Department of the Air Force could satisfy itself that the anticipated mineral development would not interfere with the primary use of Barksdale Air Force Base; and

2. Application was then made by the lessee to the Louisiana Department of Conservation for a permit to drill each well and for Unitization Orders relating thereto. The applicable fees and costs were paid by the lessee to the Louisiana Department of Conservation, and the usual, customary and required drilling reports and other pertinent information were furnished by the lessee to the Louisiana Department of Conservation.

REASONS WHY THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

THE LAW APPLICABLE TO THE FACTS ADDUCED

Since the issues relate to the taxation by Louisiana concerning minerals lying beneath Public Lands, one must determine what is meant by Public Lands. Congress has provided a definition for our use:

> (E) The term "public lands" means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except:
>
> (1) Lands located on the Outer Continental Shelf; and
>
> (2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

Federal Land Policy and Management, 43 U.S.C. §1702(e).

In establishing its unwavering policy of permitting state taxation concerning the extraction of minerals underlying these Public Lands, Congress has addressed the issue both as it affects Domain lands, and as it affects Acquired lands. As one text writer commented:

> In the case of federally owned public lands, there are two classifications: the public domain

> and acquired lands. In addition to public lands, the federal government also supervises Indian Lands. The public domain is land acquired by the federal government by treaty. Acquired land is land purchased or condemned by or donated to the federal government. In general, the Leasing Act of 1920, as amended, 30 U.S.C.A. §226 governs the leasing of both types of federal public land. See also 30 U.S.C.A. §351.

Oil and Gas Law, Williams and Meyers, Vol. 8, Manual of Terms. Both of these quoted Acts provide for state taxation. *See* 30 U.S.C. §§189 and 357.

Although substantively and procedurally statutorily interrelated, each of these, Domain lands and Acquired lands, will be separately discussed so that this Congressional policy permitting state taxation on the output of minerals lying beneath the soil of public lands may be abundantly clear.

THE FEDERAL LEASING OF DOMAIN LANDS

Federal Acts Concerning Mineral Lands Which Predated the Mineral Lands Leasing Act of February 25, 1920

The first federal act directly relating to mineral lands was known as the Preemption Act of 1841 (Act September 4, 1841, 5 Stat. 455). This Act provided that no preemption entry should be made on "lands on which are situated any salines or mines." Similar provisions were made in subsequent Acts. *See* 10 Stat. 145, 12 Stat. 410, 12 Stat. 489, and 13 Stat. 356. In 1866 Congress passed Act July 25, 1866, 14 Stat. 251, which provided that mineral deposits in lands belonging to the United States were open to exploration and purchase. *See* 30 U.S.C. §22; *see also* Act May 10, 1872, 17 Stat. 91. These Acts did not, however, apply to oil and gas deposits concerning which little information was then known. It was not until 1891 that persons desiring to obtain rights in potential oil deposits on the public lands were permitted to do so under the

Placer Mining Law, Act March 3, 1891, 26 Stat. 1097, 30 U.S.C. §35, *et seq.*

The Mineral Lands Leasing Act of 1920

Because of the unsatisfactory operation of the Placer Act, lands potentially valuable for oil, gas and related minerals were withdrawn from entry by Presidents Theodore Roosevelt and William H. Taft. The history of many of these withdrawals is related in, and their validity upheld in, *U.S. v. Midwest Oil Company*, 236 U.S. 459 (1915). After the first withdrawals, President Roosevelt sent a message to Congress suggesting "that there should be some provision for leasing coal, oil and gas rights." 41 Cong. Rec. 450 (1906); 41 Cong. Rec. 2077 (1907). For other similar discussions, *see* 50 Cong. Rec. 15058 (1914) and 51 Cong. Rec. 15064-65 (1914). During the House debate on an early version of the Mineral Lands Leasing Act of 1920 (H.R. 16136, 63d Cong., 2d Sess. (1914)), Western legislators expressed concern that under the bill the States might be unable to tax the production of federal lessees. Representative Lenroot of Wisconsin took the lead in answering Western fears by pointing out that a "State can tax the product of that mine [leased under the bill] just such sum as it [the State] chooses." 51 Cong. Rec. 15058 (1914). Although the bill under consideration in the debate mentioned above contained no express recognition of state taxing power, this was remedied in the next Congress when the House Committee on Public Lands offered an amendment to the pending leasing bill. After minor changes in the committee's proposal, the House adopted the amendment, which contained language nearly identical to that ultimately enacted as section 32 of the Mineral Lands Leasing Act of 1920. The amendment adopted by the 64th Congress read:

> Provided that nothing in this act shall be construed or held to affect the rights of the States or other local authority to exercise any rights

> which they may have to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessees.

53 Cong. Rec. 1122-1123 (1916). The adoption of the amendment reflected that view.

The Mineral Lands Leasing Act of February, 1920

The Mineral Lands Leasing Act of 1920 [Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. §181, *et seq.*] was the first federal legislation authorizing the leasing of lands in the United States of America for oil and gas development. Initially, the act did not provide for the issuance of leases as we know them; instead, it provided for the issuance of oil and gas prospecting permits. Through the years the Act underwent many changes. However, Congress *never* altered the provisions of Section 32 of the Act [30 U.S.C. §189]. In the House debate immediately preceding passage of the 1920 Act, [the Mineral Lands Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. §181 *et seq.*]. Representative Mondell again stressed that the proviso affirmed state power to tax leasehold improvements and mine output of federal lessees. 58 Cong. Rec. 7646 (1919). Despite protests that under the proviso the states would have the power to levy "burdensome taxes" and thereby ruin lessees and render the leases of no value [58 Cong. Rec. 7647 (1919) remarks of Rep. McLaughlin], Congress passed section 32 without further changes.

Congress thus intended by section 32 to grant the states permission to impose severance taxes on coal and other minerals at the rate the states themselves deemed appropriate. Both proponents and opponents of section 32 agreed that the proviso had that purpose and effect. Section 32 was codified as 30 U.S.C. §189. It reads:

> §189. Rules and regulations; boundary lines; State rights unaffected; taxation
>
> The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States. (Feb. 25, 1920, c. 85, §32, 41 Stat. 450).

Shortly after the passage of this Act, this Court had occasion to consider the provisions of Section 32. In its decision, this Court held:

> Whether the company, under its leases, is an agency, means, or instrumentality of the United States, or, in the absence of congressional consent, would be outside the reach of state taxation, we need not stop to consider, since we are of opinion that the authority of the state exists in virtue of such consent Section 32 (41 Stat. at L. 450) of the act contains the following proviso: "Provided, That nothing in this act shall be construed or held to affect the rights of the states or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."
>
> The contention on behalf of the company is that this proviso, which saves from the effect of any possible adverse construction of the act, rights of the states "which they may have," *existing* rights only, – that is to say, rights existing

> when the act was passed. But we find nothing in the body of the act which, by any stretch of meaning, purports to detract from or render less certain any such pre-existing rights; and, in that view, the theory advanced fails for want of material upon which to operate. It fairly cannot be supposed that Congress would indulge in the altogether idle ceremony of enacting a law to save rights which, being in no way challenged or affected, stood in no need of being saved. The more natural view, and the one we adopt, is that Congress, having provided for leasing the public lands to private corporations and persons whose property, income, business, and occupations ordinarily were subject to state taxation, meant by the proviso to say in effect that, although the act deals with the letting of public lands and the relations of the government to the lessees thereof, nothing in it shall be so construed as to affect the right of the states, in respect of such private persons and corporations, to levy and collect taxes as though the government were not concerned. In other words, the purpose of Congress was to remove altogether from the field of controversy, among other questions, the very question which is here presented, and to put beyond doubt the authority of the states to impose taxes upon lessees in respect of their property, although arising from, and in respect of, their taxable rights, although exercised under the act, without regard to the origin thereof, or to the interest of the United States in the lands or leases.

Mid-Northern Oil Company v. Walker, 268 U.S. 45, 48-49 (1925).

This Court more recently had another occasion to interpret the provisions of Section 32 of the 1920 Act. The Court affirmed its holding in *Mid-Northern*. In so doing, this Court held:

Section 32, as set forth in 30 USC §189 [30 USCA §189], provides in pertinent part:

> "Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."

This Court had occasion to construe §32 soon after it was enacted. The Court explained:

> "Congress . . . meant by the proviso to say in effect that, although the act deals with the letting of public lands and the relations of the [federal] government to the lessees thereof, nothing in it shall be so construed as to affect the right of the states, in respect of such private persons and corporations, to *levy and collect taxes as though the government were not concerned*. . . .
>
> * * *
>
> "We think the proviso plainly discloses the intention of Congress that *persons and corporations contracting with the United States under the act, should not, for that reason, be exempt from any form of state taxation otherwise* lawful." Mid-Northern Oil Co. v. Walker, 268 U.S. 45, 48-50, 69 L Ed 841, 45 S Ct 440 (1925) (emphasis added [by the Court]).

Commonwealth Edison Co. v. Montana, 453 U.S. 609, 631 (1981).

THE FEDERAL LEASING OF ACQUIRED LANDS

The Act Entitled Lease of Mineral Deposits Within Acquired Lands, Act of August 7, 1947 [61 Stat. 913, 30 U.S.C. §351, *et seq.*]. As Amended by Act of August 4, 1976 [90 Stat. 1083, 30 U.S.C. §352]

On August 7, 1947, Congress passed an Act entitled Lease of Mineral Deposits Within Acquired Lands [Act August 7, 1947, 61 Stat. 913, 30 U.S.C. §351 *et seq.*]. This Act included "[A]ll lands heretofore or hereafter acquired by the United States to which the 'Mineral Leasing Laws' have not been extended . . . ", Section 2 of the Act [30 U.S.C. §351]. Section 3 of the Act, however, excluded mineral "deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands . . . " [30 U.S.C. §352].

The Act of August 4, 1976 (90 Stat. 1090, 30 U.S.C. §352), amended Section 3 "by striking out '(b) set apart for military or naval purposes, or (c)'." All of the oil and gas and other minerals produced from Barksdale sought to be taxed by the severance tax at issue here were produced subsequent to, and therefore covered by, this Act as amended on August 4, 1976. The earliest date for taxes herein sought is for the taxable period of December, 1979.

Section 3 of the Act also tied the Act to the Mineral Lands Leasing Act (41 Stat. 437, 30 U.S.C. §181 *et seq.*) by providing that these acquired lands "may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof." [30 U.S.C. §352].

Section 8 of the Act provided:

> Sec. 8. Nothing contained in this Act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties

> covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

[30 U.S.C. §357.] This section is taken almost verbatim from the 1916 Amendment as introduced and passed in the 64th Congress. *See* page 15 *ante*, as well as the language in the second sentence of Section 32 of the Mineral Leasing Act of 1920, *see* page 15 *ante*. Nothing in any congressional act then or since has indicated that these provisions should in any way be interpreted and applied in differing manners. Functionally, they are indistinguishable. A side by side presentation of these two provisions make their relationships absolutely clear:

§189. Rules and regulations; boundary lines; unaffected; taxation	§357. State of local government rights; State rights taxation
* * * Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of lessee of the United States.	Nothing contained in this chapter shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this chapter including the right to levy and collect taxes upon improvements, output of mines or other rights, property, or assets of any lessee of the United States.
(Feb. 25, 1920, c. 85, §32, 41 Stat. 450)	(Aug. 7, 1947, c. 513, §8, 61 Stat. 915)

Additionally, it is to be noted that the two Leasing Acts have been tied together by cross reference in the Lease of Mineral Deposits Within Acquired Lands, and both of the

Leasing Acts were amended at the same time and in the same Act of August 4, 1976 [90 Stat. 1083, 30 U.S.C. §352].

Section 10 of the Act provided that "[T]he Secretary of the Interior is authorized to prescribe such rules and regulations as are necessary and appropriate to carry out the purposes of this Act, which rules and regulations shall be the same as those prescribed under the mineral leasing laws [the Mineral Lands Leasing Act of 1920 (41 Stat. 437, 30 U.S.C. §181 *et seq.*)] to the extent that they are applicable." [30 U.S.C. §359.]

Petitioners' contentions that there is a distinction between the laws governing Domain lands and those relating to Acquired lands is one without a difference. At all times pertinent to the taxable period in this proceeding, the two Acts are read together. They are as one. As a result of Congress's passage of the Federal Coal Leasing Amendments Act of 1975, §12(a), Pub. L. No. 94-377, 90 Stat. 1090 [codified at 30 U.S.C. §352 (1976)] the military exclusion from the statute concerning Acquired lands was removed and the statutory provisions of both the Mineral Lands Leasing Act of 1920, 41 Stat. 437 (1920) Title 30 U.S.C. Section 181, *et seq.*, and the Mineral Leasing Act for Acquired Lands of 1947, 61 Stat. 913 (1947) Title 30 U.S.C. Section 351, *et seq.*, were tied together. To agree with Petitioners' position would require this Court to interpret the current Section 352 of the Mineral Leasing Act for Acquired Lands in a way that defies common sense and the ordinary meaning of words. When Congress speaks, its words become law.

THE BUCK ACT

Louisiana Acts 1973, Ex. Sess. No. 6 amended paragraphs 7 and 8 of LA. R.S. 47:633 (to be effective January 1, 1974). By this amendment the severance tax on oil, distillate, condensate, or similar natural resources was changed from a measurement based upon quantity to a measure based upon value. Since the Louisiana severance tax on oil, distillate, condensate or similar mineral

resources is now measured upon value, the provisions of the Buck Act clearly cover the issues herein as they relate to oil and condensate. 4 U.S.C. §106. *See* **Appendix A-1**. The Buck Act is applicable to any tax based upon value. In discussing the Buck Act this Court has held that it was the intention of Congress to afford the Buck Act the broadest possible construction. To emphasize the point, this Court italicized the words "any tax" as they appeared in the sentence "The grant was given within the definition of the Buck Act, and this was for *any tax* measured by net income, gross income, or gross receipts." In discussing the modification of the United States exclusive jurisdiction by the application of the Buck Act, this court held:

> [T]he right is specifically granted to the city of Louisville as a taxing authority of Kentucky to levy and collect a tax measured by the income or earnings of any party "receiving income from transactions occurring or services performed in such area was not a Federal area." In other words, Kentucky was free to tax earnings just as if the Federal Government were not there.
>
> But the appellants next argue that the Court of Appeals erred in holding that the city's occupational tax or license fee was an "income tax" within the meaning of the Buck Act, though holding that this tax or fee was not an income tax under the Constitution of Kentucky.
>
> Was this tax an "income tax" within the meaning of the Buck Act? In a prior case, Kentucky had held this tax was not an "income tax" within the meaning of the Constitution of Kentucky but was a tax upon the privilege of working within the City of Louisville. *Louisville v. Sebree*, 308 Ky 420, 429-431, 214 SW2d 248, 253, 254. But the right to tax earnings within the area was not given Kentucky in accordance with the Kentucky law as to what is an income tax. The grant was given within the definition of the

> Buck Act, and this was for *any tax* measured by net income, gross income, or gross receipts. In the instant case, the Kentucky Court of Appeals correctly stated that the question was whether the tax was an income tax within the meaning of the federal law. We hold that the tax authorized by this ordinance was an income tax within the meaning of the Buck Act. The City, it is conceded, can levy such a tax within its boundaries outside the federal area. By virtue of the Buck Act, the tax can be levied and collected within the federal area, just as if it were not a federal area.

Howard v. Commissioners of Louisville, 344 U.S. 624, 628-629 (1953) (emphasis in original). The *Howard* case has been followed across the land in both the state and federal courts. Many different taxes [although not necessarily considered an income tax by state law] have been upheld under the auspices of the Buck Act, as construed by the *Howard* case. Notably, as the tax relates to the severance of natural resources, is the case of *Humble Oil & Refining Company v. Calvert*, 464 S.W.2d 170 (Civ. App. Texas 1971) wherein the Texas civil appellate court held:

> The Buck Act defines "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." 4 U.S.C.A. Sec. 110(c).
>
> Appellant maintains that inasmuch as in both the tax on oil and gas that the tax is measured by units of volume, that the tax is not a Buck Act tax and cite Mississippi River Fuel as authority for this contention.
>
> We do not agree. Every tax on the "value" of any commodity must of necessity be measured by some type of unit whether it be barrels, cubic feet or dollars. We agree with the State's contention that the taxes here are measured on the value of the oil and gas in each instance, whatever the formula and that the purpose of

the tax is to secure revenue for the State. By calling the tax an occupation tax or a severance tax, or whatever else, begs the question. The purpose of the tax is to bring "income" to the State for revenue purposes.

Id. at 175.

On appeal the Texas Supreme Court held:

2. The Buck Act

The second contention of the State is that by operation of the Buck Act, the taxes are sanctioned. The Buck Act was enacted by the Congress in 1940 to enable the states to impose certain taxes including "income taxes" within federal enclaves. "Income tax" is defined very broadly to mean "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." (Emphases added).

The congressional intent is strongly stated in the bill's Senate Report where it is stated that "[t]his definition [of income tax] . . . must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or any other name) if it is levied on, with respect to, or measured by net income, gross income, or gross receipts."

* * *

The Buck Act "income tax" broadly defined as it is, refers to the broad generic class of taxes upon income. It does not require that the tax be denominated an income tax or that it conform to the federal income tax. If the tax in question is based upon income and is measured by that income in money or money's worth, as a net

> income tax, gross income tax, or gross receipts tax, it is an "income tax."

Humble Oil & Refining Company v. Calvert, 478 S.W.2d 926, 929, 930 (Tex. 1972), *cert. denied*, 409 U.S. 967 (1972).[2]

---

[2] In addition to the severance tax case of *Humble v. Calvert*, the *Howard* case has been followed across the land in both the state and federal courts. Many different taxes (although not necessarily considered an income tax by state law) have been upheld under the auspices of the Buck Act, as construed by the *Howard* case. Other cases which have followed the broad interpretation of the Buck Act as enunciated in *Howard* include:

Occupation Tax	*United States v. Lewisburg Area School District*, 539 F.2d 301 (3rd Cir. 1976) *Rountree v. City and County of Denver*, 197 Col. 497, 596 P.2d 793 (Colo. 1979)
License Tax	*City of Portsmouth v. Fred C. Gardner Company Incorporated*, 215 Va. 491, 211 S.E.2d 259 (Va. 1975)
Franchise Tax	*Bullock v. General Dynamics Corp.*, 533 S.W.2d 118 (Civ. App. Tex., *reh'g denied*, 1976) *General Dynamics Corp. v. Bullock*, 547 S.W.2d 255 (Tex. 1976, *reh'g denied*, 1977), *writ denied*, 434 U.S. 1009 (1978).
Severance Tax	*Shell Oil Company v. Secretary, Revenue and Taxation*, No. 91-8635, Division L, Civil District Court for the Parish of Orleans, State of Louisiana, on review from the Board of Tax Appeals for the State of Louisiana, BTA Docket Numbers 3394 and 3395, unreported, 7/6/95. [Taxable period previous to that involving Rosewood Resources, Inc. in this proceeding.]

THE DECISION BY THE SUPREME COURT OF THE UNITED STATES IN *HUMBLE PIPE LINE CO. V. WAGGONNER* AND THE FIFTH CIRCUIT OPINIONS OF *MISSISSIPPI RIVER FUEL CORPORATION V. COCREHAM, MOUTON V. SINCLAIR OIL & GAS COMPANY,* AND *SHELL OIL CO. V. MOUTON,* ARE SUPPORTIVE OF THE DEPARTMENT'S POSITION PERTAINING TO THE APPLICABILITY OF THE BUCK ACT

The intermediate appellate court below, the First Circuit Court of Appeal, State of Louisiana, while addressing both this Court's *Humble* case and the Fifth Circuit Court of Appeal's Barksdale severance tax cases reflected that in each of those cases both this Court and the U.S. Fifth Circuit Court of Appeals referred to the taxation permissibility of a federal enclave afforded to the states by the Buck Act. The court below in this regard held:

> Plaintiffs argue that the Louisiana Severance Tax [LA. R.S. 37:631-646] infringes upon Article I, Section 8, Clause 17 of the Constitution of the United States. Plaintiffs contend that the cases of *Humble Pipe Line Co. v. Waggonner,* 376 U.S. 369, 84 S.Ct. 857, 11 L. Ed. 2d 782 (1964), and *Mississippi River Fuel Corporation v. Cocreham,* 382 F.2d 929 (5th Cir. 1967), *cert. denied,* 390 U.S. 1014, 88 S.Ct. 1264, 20 L. Ed. 2d 164 (1968) and 390 U.S. 1015, 88 S.Ct. 1264, 20 L. Ed. 2d 164 (1968), effectively settled this issue; therefore, the trial court erred in failing to follow the dictates of these cases.
>
> Article I, Section 8, Clause 17 of the United States Constitution permits the United States to obtain exclusive jurisdiction over lands within a State. It provides as follows:
>
> The Congress shall have Power . . .
>
> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of

> particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-yards, and other needful Buildings. . . .

In *Waggonner*, the United States Supreme Court rejected Louisiana's attempt to impose an ad valorem tax on the property located on Barksdale Air Force Base, a federal enclave. The Court concluded that Congress had exclusive legislative power within the confines of a federal enclave. However, the Supreme Court noted that "[w]hen Congress has wished to allow a State to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. §§104-110." *Waggonner*, 84 S.Ct. at 860-861.

In *Cocreham*, the U.S. Fifth Circuit Court of Appeals held that Louisiana could not exact severance taxes on oil and gas produced by the lessee, a private corporation, under mineral lease from the United States on land that was part of Barksdale Air Force Base. In *Cocreham*, 382 F.2d at 938, the court stated that, "[j]ust as the state cannot tax personal property located on Barksdale Field, it cannot impose a severance tax when the incidence of taxation, the severance of minerals from the soil, takes place on a federal enclave, outside the jurisdiction of the State of Louisiana." The *Cocreham* court, like the *Waggoner* court, recognized that Congress could allow a State to exercise jurisdiction to levy taxes within a federal enclave, as in the Buck Act. *Cocreham*, 382 F.2d at 937.

Thus, the exclusive jurisdiction of Congress, as set forth in Article I, Section 8, Clause 17 of

the Constitution of the United States, may be modified by an Act of Congress. The Buck Act is such a modification.

The Buck Act was enacted by Congress in 1940 to enable the states to impose certain taxes including "income taxes" within federal enclaves. Section 106 of this Act reads as follows:

> §106. Same; income tax
>
> (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.
>
> (b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

§110(c) of the Buck Act defines "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts."

Thus, the right is specifically granted to the State of Louisiana, as a taxing authority, to levy and collect a tax measured by the income from any party "receiving income from transactions occurring or services performed in such area . . . to the same extent and with the same effect as though such area was not a Federal area." *See Howard v. Commissioners of the Sinking*

Fund of the City of Louisville, 344 U.S. 624, 627-629, 73 S.Ct. 465, 467-468, 97 L. Ed. 617, 621-622 (1953).

* * * *

The trial court determined that the amendment to paragraphs 7 and 8 of LSA-R.S. 47:633 by Acts 1973, Ex. Sess., No.6, changed the severance tax on oil, distillates or other natural resources from a tax based on the quantity of the resource to a tax based on the value. The court concluded that with this amendment, the severance tax became an "income tax" within the meaning of the Buck Act, and did not infringe upon the exclusive rights of Congress to legislate for the federal enclave.

As noted by the court in *Humble Oil and Refining Company v. Calvert*, 478 S.W.2d 926 (Tex. 1972), *cert. denied*, 409 U.S. 967, 93 S.Ct. 293, 34 L. Ed. 2d 234, the broad definition of "income tax" contained in the Buck Act was intended by Congress:

> The Congressional intent is strongly stated in the bill's Senate Report where it is stated that '[t]his definition [of income tax] . . . must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or any other name) if it is levied on, with respect to, or measured by net income, gross income, or gross receipts.

Therefore, we agree with the trial court's determination that the amendment to the Louisiana Severance Tax rendered it an "income tax" within the meaning of the Buck Act. *See Humble*

Oil and Refining Company, 464 S.W.2d 170, 175-176 (Tex. Civ. App. 1971).

MRT Exploration Co. v. McNamara, 648 So.2d 1108, 1111-1112, 1113 (La. App. 1 Cir. 1994). [Petitioners' Appendix A, Pages 5a-10a.]

CONCLUSION

For these reasons, the Petition for Writ of Certiorari as filed by Mississippi River Transmission Corporation, Murphy Exploration and Production Company, Pennzoil Exploration and Production Company, Total Minatome Corporation, Nóram Energy Corp. and Rosewood Resources, Inc., should be denied.

All of the above and foregoing is thus respectfully submitted.

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No. 95-286

In The

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

versus

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

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APPENDIX A.

STATUTES INVOLVED

Federal Statutes of General Application to Public Lands:

Article I, Section 8, Clause 17, Constitution of the United States:

> The Congress shall have power . . . To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings; . . .

The Buck Act (July 30, 1947, (c.) 389, 61 Stat. 644.) 4 U.S.C. § 106:

> (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

The Buck Act (July 30, 1947, (c.) 389, 61 Stat. 645.) 4 U.S.C. § 110:

As used in sections 105-109 of this title –

(a) The term "person" shall have the meaning assigned to it in section 3797 of Title 26.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term 'income tax' means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any Territory or possession of the United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

The Mineral Lands Leasing Act of 1920 (Feb. 25, 1920, c 85, § 32, 41 Stat. 450.) 30 U.S.C. § 189:

§ 189. Rules and regulations; boundary lines; State rights unaffected; taxation

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

The Mineral Leasing Act for Acquired Lands (Aug. 7, 1947, c 513, § 3, 61 Stat. 914) 30 U.S.C. § 352:

§ 352. Deposits subject to lease; consent of department heads; lands excluded

Except where lands have been acquired by the United States for the Development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944 (50 U.S.C. sec. 1611 and the following), all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof.

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered: *Provided*, That nothing in this chapter is intended, or shall be construed, to apply to or in any manner affect any mineral rights, exploration permits, leases or conveyances nor minerals that are or may be in any tidelands; or submerged lands; or in lands underlying the three mile zone or belt involved in the case of the United States of America against the State of California now pending in application for rehearing in the Supreme Court of the United States; or in lands underlying such three mile zone or belt, or the continental shelf, adjacent or littoral to any part of the land within the jurisdiction of the United States of America.

The Mineral Leasing Act for Acquired Lands (Aug. 7, 1947, c 513, § 8, 61 Stat. 915) 30 U.S.C. § 357:

§ 357. State or local government rights; taxation

Nothing contained in this chapter shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this chapter, including the right to levy and collect taxes upon improvements, output of mines, or other

> rights, property, or assets of any lessee of the United States.

The Federal Coal Leasing Amendments Act of 1975 (Aug. 4, 1976, Pub. L. 94-377, § 12(a), 90 Stat. 1090):

> Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) is amended by striking out "(b) set apart for military or naval purposes, or (c)" and insert in lieu thereof "or (b)".

APPENDIX B.

The Barksdale Congressional Acts:

February 25, 1929, 45 Stat. 1304:

Provided, That the Secretary of War is hereby authorized, when directed by the President, to accept in behalf of the United States, free from encumbrances and without cost to the United States, the title in fee simple to such land as he may deem necessary or desirable, in the vicinity of Shreveport, Louisiana, approximately 25,000 acres, more or less, as a site for an aviation field.

July 1, 1930, 46 Stat. 843:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proviso contained in the project "Shreveport, Louisiana (attack wing)," under section 3 of the Act of February 25, 1929, entitled "An Act to authorize appropriations for construction at military posts, and for other purposes" (45 Stat. 1304), is hereby changed to read as follows: "*Provided*, That the Secretary of War is hereby authorized, when directed by the President, to accept in behalf of the United States and without cost to the United States, the title to such land as he may deem necessary or desirable, in the vicinity of Shreveport, Louisiana, approximately twenty-five thousand acres, more or less, as a site for an aviation field, subject to such encumbrances as the Secretary of War in his discretion determines will not interfere with the use of the property for aviation or military purposes: *Provided further*, That should it be determined from time to time that any existing oil-pipe lines as located in, upon, or across said

lands interfere with the use of said property, the Secretary of War may grant easements for new rights of way, subject to such provisions as he deems advisable, for the relocation of any said pipe lines in such other areas of the property as he determines will not substantially injure the interests of the United States therein."

APPENDIX C.

The Barksdale Louisiana Acts:

The Barksdale Louisiana Acts are pertinently excerpted as follows

> Article 4, Section 12 of the (1921) Constitution [Louisiana Acts 1928, No. 43]:[1]
>
> A JOINT RESOLUTION
>
> Proposing an amendment to Section 12 of Article IV of the Constitution of the State of Louisiana, relative to limitations imposed upon the State and political corporations thereof, and providing for authority in the State, or any political corporation thereof, to donate property to the United States of America for certain purposes.

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[1] This Joint Resolution, as written, included the word "general" preceding the words "military uses." This was omitted from the Constitutional Amendment. After this Constitutional Amendment, the Louisiana Constitution of 1921, Article IV, Section 12, read, in pertinent part:

> **Donations to United States.** Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title, or otherwise convey, to the United States any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, for the following public purposes; . . . in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for military uses; . . . .

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of all the members elected to each House concurring, That Section 12 of Article IV of the Constitution of the State of Louisiana shall be amended by adding to the end of said Section the following provision:

"Provided further that the State or any political corporation thereof may donate, by fee simple title, to the United States of America any property which it may own, or which it may expropriate or otherwise acquire, for the following public purposes: Airports, flying fields, landing fields, parks, forest preserves, canals, hospitals, agricultural experiment and research stations, military posts and for general military uses; and for the purpose of acquisition and improvement of property for such purposes, may incur debt, issue bonds and levy taxes as otherwise provided in this Constitution."

Section 2. Be it further resolved, etc., That this proposed amendment shall be submitted to the duly qualified electors of the State, in accordance with law, to be voted upon at the general congressional Election to be held on the 6th day of November, 1928, the official ballots to have printed thereon the words:

"For the proposed amendment to Section 12, Article IV, of the Constitution of the State of Louisiana, relative to the donation of property by the State or any political corporation thereof to the United States of America for certain purposes."

and the words:

"Against the proposed amendment to Section 12, Article IV, of the Constitution of the

State of Louisiana, relative to the donation of property by the State or any political corporation thereof to the United States of America for certain purposes."

Approved by the Governor: July 7, 1928.

A true copy:

JAMES J. BAILEY,

Secretary of State.

NOTE: The above was No. 2 on the ballots voted on throughout the State on November 6, 1928, and carried by the following vote:

For .....81,734 votes

Against .....17,553 votes

Louisiana Acts 1928, No. 24:

Section 3. All such municipalities and police juries are hereby authorized and empowered to donate to the United States of America any property which they may own, expropriate or otherwise acquire, for use as airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals, and for other military purposes.

Louisiana Acts 1928 Extra Session, No. 5:

Section 3. All such municipalities and police juries are hereby authorized and empowered to own and operate and to improve, whether owned by such municipality or parish or not, airports, flying fields, landing fields, parks,

bombing ranges, military posts, hospitals and for other military purposes.

Louisiana Acts 1930, No. 4:[2]

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[2] The Louisiana Legislature passed three (3) additional Acts for the Barksdale transaction. As drawn, the first of these, Acts 1924, No. 39, permitted the expropriation by a municipality of private property both within or without its limits. By Acts 1928, No. 24, this Act (Acts 1924, No. 39) was repealed. Acts 1928, No. 24 provided, among other provisions:

> Section 3. All such municipalities and police juries are hereby authorized and empowered to donate to the United States of America any property which they may own, expropriate or otherwise acquire, for use as airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals, and for other military purposes.

Acts 1928, No. 24, however, limited the property which could be expropriated to lands within the parishes' or municipalities' limits.

The business leaders of Shreveport approached Governor Huey Long and requested that there be included in the Extra Session of 1928, which had already been called, legislation to correct the defect in the original bill, Acts 1928, No. 24. Governor Huey Long refused to do so. As a *quid pro quo* he wanted the Shreveport Chamber of Commerce to apologize to him, the Ewing newspaper (Shreveport Times) to show him more respect, the Caddo School Board to agree to distribute free school books, and the Caddo Delegation of the Legislature to support the Governor's program in the Extra Session. Huey Long's demands were refused. However, shortly thereafter it was learned that Shreveport had been selected to provide the Barksdale site. An immediate reversal took place - the School Board agreed to distribute the free text books and the Caddo Delegation agreed to support the administration's bills. The foregoing historical data is drawn from *Huey Long* A Biography by T. Harry Williams, pages 328-331.

AN ACT

Donating to the United States of America certain property belonging to the State of Louisiana in Bossier Parish, Louisiana, for an air port[sic], flying field, landing field, military post and military uses, and empowering, authorizing and instructing the Registrar of the State Land Office to execute an act of donation to the United States of America for such purposes.

SECTION 1. WHEREAS, the State of Louisiana owns lands which were formerly the beds of certain navigable bodies of water and of other streams in Bossier Parish, Louisiana, which are within a tract to be donated by the City of Shreveport to the United States of America for an airport, flying field, landing field, military post and military uses; and

WHEREAS, the United States of America will not accept said tract of land without the

---

The third legislative authorization was Acts 1928 Extra Session No. 5. This Act restates the "within or without" language, and also provided as follows:

> Section 3. All such municipalities and police juries are hereby authorized and empowered to own and operate and to improve, whether owned by such municipality or parish or not, airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals and for other military purposes.

Despite the urgent need for these legislative provisions, all of the land comprising Barksdale was acquired by the City of Shreveport without the need for expropriation, except for a single tract consisting of 18.73 acres. This expropriation proceeding is entitled *City of Shreveport v. Pedro*, 127 So. 865, 170 LA 351 (LA. 1930).

inclusion of this property within said tract belonging to the State of Louisiana, and

WHEREAS, said project is a great benefit to the State of Louisiana, and to the very vital cause of national defense; and

WHEREAS, the State of Louisiana is authorized by its Constitution to donate its property to the United States of America by fee simple title for such purposes; NOW THEREFORE

BE IT ENACTED by the Legislature of Louisiana that all of the beds of the streams, lakes, bayous and lagoons, whether navigable or non-navigable, lying within the following described area,

[Description omitted from this quotation]

situated in Bossier Parish, Louisiana, be and is hereby donated to the United States of America for an air port[sic], flying field, landing,(sic) field, military post and for military purposes.

SECTION II. That the Registrar of the State Land Office of the State of Louisiana is hereby empowered, authorized and instructed to execute an act of donation conveying the lands described in section one hereof, to the United States of America for said purposes, and that upon the execution of said act of donation and its acceptance by the United States of America, the Title in fee simple to the same shall vest in and belong to the United States of America.

Louisiana Acts 1940, No. 75[3]

AN ACT

To authorize the Governor, or the governing body of any political subdivision, of the State of Louisiana, to carry into effect Section 12 of Article IV of the constitution, by donating or otherwise transferring to the United States, lands or other property belonging to the State of Louisiana, or the political subdivisions thereof, for certain purposes, particularly in connection with the present National Defense Program; and to repeal all conflicting laws.

---

[3] Acts 1940, No. 75 was carried into the statutes as LA. R.S. 52:2 and, as such, in pertinent part reads:

> **§ 2 Donations to United States for certain purposes; officers making donations**
>
> The state or any state agency or subdivision may donate or convey to the United States any lands, movable or immovable property, rights of way, or servitudes which they may own or acquire, for use by the United States in connection with:
>
> * * * * *
>
> (4) Airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts and for any military purposes.

This language parallels that of Article 4, Section 12 of the 1921 Constitution, *see* this Appendix page C-1, *ante*; Louisiana Acts 1930, No. 4, Acts 1928, No. 24, and Acts 1928 Extra Session No. 5. *See* this Appendix page C-1 and footnote 2, *ante*. See, also, Reporter's Notes following LA. R.S. 52:2 which read:

> Acts 1930, No. 4, donating land in Bossier Parish to the federal government and authorizing the Registrar of the State Land Office to execute an act of donation to the United States is special in nature and has been deleted from the Revised Statutes. It has not been repealed.

Section 1. Be it enacted by the Legislature of Louisiana, That the State or any agency, branch, municipality or subdivision thereof is hereby authorized through their representatives named in Section 2 hereof to donate by fee simple title, or otherwise convey, to the United States any lands, property, movable and immovable, rights of ways, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, for the following public purposes; use, in connection with the improvement and maintenance of the navigation of natural waterways, the construction and improvement and maintenance of artificial navigable waterways, and river and harbor works of every description and kind authorized by any Act or Acts of the Congress of the United States or Federal statutes, or otherwise, and in connection with flood control works of every description and kind so authorized, or in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for any military uses, particularly in connection with the National Defence Program now being put into operation by the Congress of the United States and the National Administration.

Section 2. That in the case of property owned by the State of Louisiana or any branch or agency thereof the acts authorized by Section 1 hereof shall be performed by the Governor with the consent and approval of the Lieutenant Governor or the Attorney General; and in the case of property owned by a municipality, by the Commission Council or such other similar governing body as may exist in the particular

municipality involved; and in the case of a parish by the Policy Jury thereof; and in the case of any other subdivision of the State of Louisiana by the governing board, council, commission or other similar body as the case may be.

Section 3. That all laws or parts of laws in conflict herewith are hereby repealed.

Approved by the Governor: July 9, 1940.

LA R.S. 52:2

§ 2. Donations to United States for certain purposes; officers making donations

The state or any state agency or subdivision may donate or convey to the United States any lands, movable or immovable property, rights of way, or servitudes which they may own or acquire, for use by the United States in connection with:

* * * *

(4) airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts and for any military purposes.

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APPENDIX D.

Louisiana Severance Tax Provisions:

The Louisiana Severance Tax provisions may be found at LA. R.S. 47:631 et seq. They are here pertinently excerpted as follows:

LA. R.S. 47:631:

> Taxes . . . are hereby levied upon all natural resources severed from the soil or water, including . . . minerals such as oil, gas . . . condensate. . . .

LA. R.S. 47:632:

> These taxes shall be paid by the owner . . . at the time of the severance. . . .

LA. R.S. 47:633:

> The taxes . . . shall be paid at the following rates. . . .
>
> (7)(b) On oil . . . percentum of its value. . . .
>
> (8) On . . . condensate . . . percentum of gross value.
>
> (9) On natural gas . . . cents per thousand cubic feet.

APPENDIX E.

Authority to Protect Oil Deposits Against Drainage – Attorney General's Opinion – 40 Op.A.G. 41

Where oil is being drained from land not subject to the Mineral Leasing Act there is implied authority in the head of the department or agency having jurisdiction to take protective measures, including the making of necessary contracts.

If it is found advisable or more convenient for the protective action to be taken by another department or agency it is within the power of the President to transfer the necessary authority and jurisdiction.

April 2, 1941.

THE PRESIDENT.

MY DEAR MR. PRESIDENT: I have the honor to confirm the view expressed by me at a recent cabinet meeting that there is implied authority in the Executive branch to take protective measures in cases where lands acquired by the United States for a specific public purpose are found to contain oil which is being drained by adjoining owners – such lands not being subject to the Mineral Leasing Act of February 25, 1990 (41 Stat. 437), as amended (U.S.C., title 30, sec. 181).

It is my opinion that the authority to take the protective action is vested in the department or agency charged with jurisdiction over the land involved, and includes the making of any necessary contracts.

If, however, it should be determined in particular cases that it is advisable or more convenient for the protective action to be taken by another department or agency it is within your

power to transfer to the latter department or agency by Executive order the necessary authority, duty and jurisdiction with respect to the oil, to be exercised, however, upon the condition and to the extent that there is no interference with the primary use of the land.

Respectfully,

ROBERT H. JACKSON.

Official Opinion of the Attorney General of the United States advising the President and Heads of Departments in relation to Their Official Duties, Volume 40, page 41.

APPENDIX F.

Executive Orders:

1. Executive Order 9146

AUTHORIZING THE SECRETARY OF THE INTERIOR TO WITHDRAW AND RESERVE PUBLIC LANDS

By virtue of the authority vested in me by the act of June 25, 1910, c. 421, 36 Stat. 847, and as President of the United States, I hereby authorize the Secretary of the Interior to sign all orders withdrawing or reserving public lands of the United States, and all orders revoking or modifying such orders: *Provided,* that all such orders shall have the prior approval of the Director of the Bureau of the Budget and the Attorney General, as now required with respect to proposed Executive Orders by Executive Order No. 7298 of February 18, 1936, and shall be submitted to the Division of the Federal Register for filing and publication: *Provided, further,* that no such order which affects lands under the administrative jurisdiction of any executive department or agency of the Government, other than the Department of the Interior, shall be signed by the Secretary of the Interior without the prior concurrence of the head of the department or agency concerned.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
April 24, 1942.

[F.R. Doc. 42-3682. Filed, April 25, 1942; 11:04 a.m.] 7 F.R. 3067, The Act of June 25, 1910 was codified as 43 U.S.C.A. 141 *et seq.*

2. Executive Order 9337

AUTHORIZING THE SECRETARY OF THE INTERIOR TO WITHDRAW AND RESERVE LANDS OF THE PUBLIC DOMAIN AND OTHER LANDS OWNED OR CONTROLLED BY THE UNITED STATES

By virtue of the authority vested in me by the act of June 25, 1910, ch. 421, 36 Stat. 847, and as President of the United States, it is ordered as follows:

Section 12. The Secretary of the Interior is hereby authorized to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States to the same extent that such lands might be withdrawn or reserved by the President, and also, to the same extent, to modify or revoke withdrawals or reservations of such lands: *Provided*, That all orders of the Secretary of the Interior issued under the authority of this order shall have the prior approval of the Director of the Bureau of the Budget and the Attorney General, as now required with respect to proposed Executive orders by Executive Order No. 7298 of February 18, 1936, and shall be submitted to the Division of the Federal Register for filing and publication: *Provided, further*, That no such order which affects lands under the administrative jurisdiction of any executive department or agency of the Government, other than the Department of the Interior, shall be issued by the Secretary of the Interior without the prior concurrence of the head of the department or agency concerned.

Section 2. This order supersedes Executive Order No. 9146 of April 24, 1942, entitled

"Authorizing the Secretary of the Interior to Withdraw and Reserve Public Lands".

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
April 24, 1943.

[F.R. Doc. 43-6460; Filed, April 265, 1943; 3:15 p.m.] 8 F.R. 5516.

Executive Order No. 10355

May 28, 1952, 17 F.R. 4831

DELEGATING TO THE SECRETARY OF THE INTERIOR THE AUTHORITY OF THE PRESIDENT TO WITHDRAW OR RESERVE LANDS OF THE UNITED STATES FOR PUBLIC PURPOSES

By virtue of the authority vested in me by section 301 of title 3 of the United States Code (section 10 of Public Law 248, 82d Congress) [3 U.S.C.A. § 301], and as President of the United States, it is ordered as follows:

Section 1. (a) Subject to the provisions of subsections (b), (c), and (d) of this section, I hereby delegate to the Secretary of the Interior the authority vested in the President by section 1 of the act of June 25, 1910, ch. 421, 36 Stat. 847 (43 U.S.C. 141) [43 U.S.C.A. § 141], and the authority otherwise vested in him to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States in the continental United States or Alaska for public purposes, including the authority to modify or revoke withdrawals and reservations of such lands heretofore or hereafter made.

(b) All orders issued by the Secretary of the Interior under the authority of this order shall be designated as public land orders and shall be submitted to the Division of the Federal Register, General Services Administration, for filing and for publication in the FEDERAL REGISTER.

(c) No order affecting land under the administrative jurisdiction of any executive department or agency of the Government other than the Department of the Interior shall be issued by the Secretary of the Interior under the authority of this order without the prior approval or concurrence, so far as the order affects such land, of the head of the department or agency concerned, or of such officer of the department or agency concerned as the head thereof may designate for such purpose: *Provided*, that such officer is required to be appointed by the President by and with the advice and consent of the Senate.

(d) Any disagreement between two or more executive departments or agencies with respect to any proposed withdrawal or reservation shall be referred to the Director of the Bureau of the Budget for consideration and adjustment. The Director may, in his discretion, subject the matter to the President for his determination.

Sec. 2. The Secretary of the Interior is authorized to issue such rules and regulations, and to prescribe such procedures, as he may from time to time deem necessary or desirable for the exercise of the authority delegated to him by this order.

Sec. 3. The Secretary of the Interior is authorized to redelegate the authority delegated to him by this order to one or more of the following-designated officers: the Under Secretary of the Interior and the Assistant Secretaries of the Interior.

Sec. 4. This order supersedes Executive Order No. 9337 of April 24, 1943, entitled "Authorizing the Secretary of the Interior to Withdraw and Reserve Lands of the Public Domain and Other Lands Owned or Controlled by the United States."

HARRY S. TRUMAN

THE WHITE HOUSE,
May 26, 1952.

17 F.R. 4831.

APPENDIX G.

The Barksdale Public Land Orders:

TITLE 43 – PUBLIC LANDS: INTERIOR
Chapter 1 – Bureau of Land Management,
Department of the Interior

Appendix – Public Land Orders

[Public Land Order 701]

LOUISIANA

Transferring Jurisdiction over the Oil
and Gas Deposits in Certain Lands
Owned by the United States

Whereas the hereinafter-described lands, title to which has been acquired by the United States, comprising the Barksdale Bombing and Gunnery Range portion of the Barksdale Air Force Base Reservation, Louisiana, are reported to be subject to drainage of their oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said lands; and

Whereas, in order to facilitate such action, it is considered advisable that jurisdiction over the oil and gas deposits in such lands be transferred from the Department of the Air Force to the Department of the Interior; and

Whereas such transfer has the concurrence of the Secretary of the Air Force:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described lands is hereby transferred from the Department of the Air Force to the Department of the Interior:

LOUISIANA MERIDIAN

T. 17 N, R. 11 W.,
Sec. 6, W1/2 and W1/2E1/2
Sec. 7, W1/2 and W1/2E1/2

T. 18 N, R. 11 W.,
Sec. 31.

T. 17 N, R. 12 W.,
Sec. 10, SE1/4:
Secs. 11 and 12.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such lands.

3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.

4. No oil and gas lessee shall use or invade, for any purpose, the surface of the W 1/2W1/2 sec. 5, W1/2NW1/4 sec. 7, T.17 N, R. 11W., W1/2 sec. 31, T. 18 N, R. 11W., NE1/4SE1/4, NE 1/4SE1/4SE1/4, W1/2 SE1/4SE1/4, W1/2SE1/4 sec. 10, N 1/2, NW1/4SW1/4 sec. 11, or N1/2 sec. 11, or N1/2 sec. 12, T. 17 N., R. 12W.

5. Prior to any advertisement for bids the Department of the Air Force shall have the opportunity to indicate the further reservations and restrictions that are to be included in the proposed lease or leases.

6. Prior to execution of any lease or development authorized by the Department of the Interior the approval of the Department of the Air Force is to be obtained to assure that there is no interference with the primary use of Barksdale Air Force Base.

7. All moneys received as royalties under leases, or otherwise, on account of oil and gas extracted from such land shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

OSCAR L. CHAPMAN,
Secretary of the Interior.

February 21, 1951.

[F.R. Doc. 51-2678; Filed, Feb.27, 1951; 8:47 a.m.] 16 F.R. 1901-02.

TITLE 43 – PUBLIC LANDS: INTERIOR

Chapter 1 – Bureau of Land Management Department of the Interior

Appendix – Public Land Orders

[Public Land Order 884]

LOUISIANA

TRANSFERRING JURISDICTION OVER THE OIL AND GAS DEPOSITS IN CERTAIN LANDS OWNED BY THE UNITED STATES

Whereas the hereinafter-described lands, title to which has been acquired by the United States, comprising a part of the Barksdale Bombing and Gunnery Range portion of the Barksdale Air Force Base Reservation, Louisiana, are reported to be subject to drainage of their oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said lands; and

Whereas, in order to facilitate such action, it is considered advisable that jurisdiction over the oil and gas deposits in such lands be transferred from the Department of the Air Force to the Department of the Interior; and

Whereas such transfer has the concurrence of the Secretary of the Air Force:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No.10355 of May 26, 1952 (17 F.R. 4831) it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described lands is hereby transferred from the Department of the Air Force to the Department of the Interior:

LOUISIANA MERIDIAN

T. 18 N., R. 11 W.,
Sec. 19, SW1/4 and S1/2SE1/4, those portions lying south of the south right-of-way line of the Vicksburg, Shreveport, and Pacific Railway Company.
Sec. 30.

T. 18 N, R. 12 W.,
Sec. 23, S1/2, that portion lying south of the south right-of-way line of the Vicksburg, Shreveport, and Pacific Railway Company;
Sec. 24, S1/2, that portion lying south of the south right-of-way line of the Vicksburg, Shreveport, and Pacific Railway Company;
Sec. 25, N1/2;
Sec. 26, NE1/4.

The areas described aggregate approximately 1,900 acres.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such lands.

3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.

4. No oil and gas lessee shall use or invade, for any purpose, the surface of the SW 1/4NW1/4, W1/2SW1/4 sec. 30, T. 18 N., R. 11 W., S 1/2N1/2 sec. 25 and S1/2NE1/4 sec. 26, T. 18 N., R. 12 W.

5. Prior to any advertisement for bids the Department of the Air Force shall have the opportunity to indicate the further reservations and restrictions that are to be included in the proposed lease or leases.

6. All moneys received as royalties under leases, or otherwise, on account of oil and gas extracted from such land shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

JOEL D. WOLFSOHN,
Assistant Secretary of the Interior.

February 5, 1953.

[F.R. Doc. 53-1365 Filed, Feb.10, 1953; 8:45 a.m.] 18 F.R. 846.

TITLE 43 – PUBLIC LANDS: INTERIOR

Chapter 1 – Bureau of Land Management Department of the Interior

Appendix – Public Land Orders

(Public Land Order 1807)

[51263]

LOUISIANA

TRANSFERRING JURISDICTION OVER THE OIL AND GAS DEPOSITS IN CERTAIN LANDS OWNED BY THE UNITED STATES

Whereas the hereinafter-described lands, title to which has been acquired by the United States, comprising a part of the Barksdale Bombing and Gunnery Range portion of the Barksdale Air Force Base Reservation, Louisiana, are reported to be subject to drainage of their oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said lands; and

Whereas, in order to facilitate such action, it is considered advisable that jurisdiction over the oil and gas deposits in such lands be transferred from the Department of the Air Force to the Department of the Interior; and

Whereas such transfer has the concurrence of the Secretary of the Air Force:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No.10355 of May 26, 1952 it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described lands is hereby transferred from the Department of the Air Force to the Department of the Interior:

LOUISIANA MERIDIAN

T. 18 N., R. 12 W.,
Sec. 26, NW1/4.

The area described aggregates approximately 160.30 acres.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such lands.

3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.

4. No oil and gas lessee shall use or invade, for any purpose, the surface of the lands.

5. All moneys received as royalties under leases, or otherwise, on account of oil and gas extracted from such land shall be paid into the

Treasury of the United States and credited to miscellaneous receipts.

ROGER ERNST,
Assistant Secretary of the Interior.

February 27, 1959.

[F.R. Doc. 59-1891; Filed, Mar. 4, 1959; 8:47 a.m.] 24 F.R. 1651.

TITLE 43 – PUBLIC LANDS: INTERIOR
Chapter 1 – Bureau of Land Management, Department of the Interior
Appendix – Public Land Orders

[Public Land Order 2178]
[51263]

LOUISIANA

Transferring Jurisdiction of the Oil and Gas Deposits in Certain Lands Owned by the United States; Amending Public Land Order Nos. 701, 884, and 1807

Whereas the hereinafter-described lands, title to which has been acquired by the United States, comprising a portion of the Barksdale Air Force Base East Reservation, are reported to be subject to drainage of their oil and gas deposits by wells on adjacent lands in private ownership; and

Whereas it is necessary in the public interest that such protective action be taken as will prevent loss to the United States by reason of the drainage or threatened drainage from the said lands; and

Whereas, in order to facilitate such action, it is considered advisable that jurisdiction over the oil and gas deposits in such lands be transferred from the Department of the Air Force to the Department of the Interior; and

Whereas such transfer has the concurrence of the Secretary of the Air Force:

Now, therefore, by virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. The jurisdiction over the oil and gas deposits in the following-described lands is hereby transferred from the Department of the Air Force to the Department of the Interior:

LOUISIANA MERIDIAN

T. 17 N, R. 12 W.
Secs. 1, 2, 3, 4 and 9;
Sec. 10, N1/2 and SW1/4.

T. 18 N, R. 12 W.
Sec. 22, S1/2 (that part lying south of the south right-of-way line of the Illinois Central Railway Company);
Sec. 25, S1/2;
Sec. 26, S1/2;
Sec. 27;
Sec. 28, E1/2;
Sec. 33, E1/2;
Secs. 34, 35 and 36.

The areas described aggregate approximately 7,840 acres.

2. The Secretary of the Interior shall take such action as may be necessary to protect the United States from loss on account of drainage or threatened drainage of oil and gas from such lands.

3. The jurisdiction of the Department of the Interior over such lands shall be subject to the primary jurisdiction of the Department of the Air Force over the lands for Air Force purposes.

4. Prior to any advertisement for bids the Department of the Air Force shall have the opportunity to indicate the further reservations and restrictions that are to be included in the proposed lease or leases.

5. Prior to execution of any lease or development authorized by the Department of the Interior the approval of the Department of the Air Force is to be obtained to assure that there is no interference with the primary use of Barksdale Air Force Base.

6. Public Land Orders No. 701 of February 21, 1951, No. 884 of February 5, 1953, and No. 1807 of February 27, 1959, are hereby amended to delete paragraphs No. 4 of each order, prohibiting surface use of the following-described lands:

PUBLIC LAND ORDER NO. 701

T. 17 N, R. 11 W.,
Sec. 6, W1/2 W1/2;
Sec. 7, W1/2 NW1/4;

T. 18 N, R. 11 W.,
Sec. 31, W1/2

T. 17 N, R. 12 W.,
Sec. 10, NE1/4SE1/4, NE1/4SE1/4SE1/4;
W1/2SE1/4SE1/4 and W1/2SE1/4;
Sec. 11, N1/2 and NW1/4SW1/4;
Sec. 12, N1/2.

PUBLIC LAND ORDER NO. 884

T. 18 N, R. 12 W.,
Sec. 30, SW1/4NW1/4 and W1/2SW1/4

T. 18 N, R. 12 W.,
Sec. 25, S1/2N1/2;
Sec. 26, S1/2NE1/4.

PUBLIC LAND ORDER NO. 1807

T. 18 N, R. 12 W.,
Sec. 26, NW1/4

FRED A SEATON,
Secretary of the Interior.

August 10, 1960.

[F.R. Doc. 60-7658; Filed, Aug. 16, 1960; 8:45 a.m.] 25 F.R. 7878.

General Statutory Provisions

Louisiana Acts 1892, No. 12 §§ 1, 2, provided as follows:

1. The United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

2. The United States may enter upon and occupy any land which may have been or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation.

Louisiana Acts 1942, No. 31, § 1.

§ 1. Consent of state to acquisition

The United States, in accordance with the seventeen clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of Louisiana on the property acquired by the United States.

AS CARRIED INTO THE REVISED STATUTES OF 1950, LA R.S. 52:1

§ 1. Consent of state to acquisition

The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property.The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States.

Special Barksdale Statutory Provisions in Pertinent Part

Louisiana Constitution of 1921, Article IV, Section 12 [Louisiana Acts 1928, No. 43]:

Donations to United States.

Provided further, that the State, or any agency or political corporation or subdivision thereof may, through the authorized representatives thereof, donate by fee simple title or otherwise convey, to the United States any lands, property, movable and immovable, rights of way, easements or other servitudes, or any of them, which they now own, or may hereafter acquire by purchase, donation, expropriation or otherwise, for the following public purposes; . . . in connection with airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts, and for military uses; . . ..

Louisiana Acts 1928, No. 24:

Section 3. All such municipalities and police juries are hereby authorized and empowered to donate to the United States of America any property which they may own, expropriate or otherwise acquire, for use as airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals, and for other military purposes.

Louisiana Acts 1928 Extra Session, No. 5:

Section 3. All such municipalities and police juries are hereby authorized and empowered to own and operate and to improve, whether owned by such municipality or parish or not, airports, flying fields, landing fields, parks, bombing ranges, military posts, hospitals and for other military purposes.

Louisiana Acts 1930, No. 4:

BE IT ENACTED by the Legislature of Louisiana that all of the beds of the streams, lakes, bayous and lagoons, whether navigable or non-navigable, lying within the following described area,

[Description omitted from this quotation]

situated in Bossier Parish, Louisiana, be and is hereby donated to the United States of America for an air port[sic], flying field, landing,(sic) field, military post and for military purposes.

Louisiana Acts 1940, No. 75:

§2 Donations to United States for certain purposes; officers making donations

The state or any state agency or subdivision may donate or convey to the United States any lands, movable or immovable property, rights of way, or servitudes which they may own or acquire, for use by the United States in connection with:

* * * * *

(4) Airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts and for any military purposes.

AS CARRIED INTO THE REVISED STATUTES OF 1950, LA R.S. 52:2

§2. Donations to United States for certain purposes; officers making donations

The state or any state agency or subdivision may donate or convey to the United States any lands, movable or immovable property, rights of way, or servitudes which they may own or acquire, for use by the United States in connection with:

(1) The improvement and maintenance of the navigation of natural waterways;

(2) The construction, improvement, and maintenance of artificial navigable waterways, river and harbor works;

(3) Flood control works;

(4) airports, flying fields, landing fields, parks, forest preserves, canals, irrigation districts, hospitals, agricultural experiment and research stations, military posts and for any military purposes.

In the case of property owned by Louisiana or any state branch or agency, the transfer or conveyance shall be performed by the governor with the consent and approval of the lieutenant governor or the attorney general. The commission council or other governing body of a municipality shall transfer or convey property owned by a municipality. In the case of a parish the parish governing authority shall transfer or convey the property and in the case of any other subdivision of the state the governing body shall transfer the property.

PETITIONERS' RELIANCE ON LA. R.S. 52:1, AS SOURCED FROM ACTS 1892, No.12 AND ACTS 1942, No. 31, IS MISPLACED.

As can readily be seen from the foregoing, the words "airports" "flying fields" "landing fields" "military posts" and "military uses 'or purposes'" is in all five of these Barksdale related Acts, and these words were, in turn, carried over into the Revised Statutes of 1950, as LA. R.S. 52:2.

However, none of these words, "airports" "flying fields" "landing fields" "military posts" and "military uses 'or purposes'", appear anywhere in Louisiana Acts 1892, No. 12, nor were they in Louisiana Acts 1942, No. 31, nor were they in the carryover of those two Louisiana Acts into the Revised Statutes of 1950, as LA. R.S. 52:1

Nothing in the statutory provisions authorizing and implementing the donation of the Barksdale property to the federal government mentions any waiver, temporary or permanent, of the power to levy a non-discriminatory severance tax on oil, gas and condensate extracted and produced from the bowels of the earth underlying Barksdale by private lessees such as the petitioners here.

(3)

No. 95-286

Supreme Court, U.S.
FILED
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,
Petitioners,

v.

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal, First Circuit, State of Louisiana

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BRIEF OF AMICUS CURIAE AMERICAN PETROLEUM INSTITUTE IN SUPPORT OF PETITIONERS

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No. 95-286

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, *et al.*

Petitioners,

v.

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal, First Circuit, State of Louisiana

---

BRIEF OF AMICUS CURIAE AMERICAN PETROLEUM INSTITUTE IN SUPPORT OF PETITIONERS

The American Petroleum Institute ("API") respectfully files this brief, as an *amicus curiae*, in support of the Petition for Writ of Certiorari filed by Mississippi River Transmission Corporation, Murphy Exploration and Production Company, Pennzoil Exploration and Production Company, Total

Minatome Corporation, NorAm Energy Corp. and Rosewood Resources, Inc. ("Petitioners").[1]

STATEMENT OF INTEREST

The API is a trade association located in Washington, D.C., which represents the interests of its membership on issues of national importance before federal government agencies, Congress, and the courts. The API has over 300 members, from all segments of the oil and gas industry, including many integrated and independent oil and gas producers. Those members hold interests in many oil and gas leases on federal lands, and have an interest in the resolution of the issues presented in the Petition.

The Petition asks this Court to decide whether Louisiana may impose a severance tax on oil and gas produced from acquired federal lands subject to the exclusive jurisdiction of Congress. The Louisiana courts held that Louisiana has the power to impose such taxes pursuant to two federal statutes, the Buck Act, 4 U.S.C. §§ 105-110, and the Mineral Leasing Act for Acquired Lands ("MLAAL"), 30 U.S.C. §§ 351-359. If other states adopt Louisiana's interpretation of the federal statutes at issue in this case, the interests of API members that currently hold oil and gas leases on acquired federal lands, or seek to bid on such leases in the future, could be directly affected.

SUMMARY OF ARGUMENT

This Court should grant certiorari to correct the erroneous interpretation of federal law by the Louisiana courts

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[1] All parties to this action have consented to the filing of this brief, and their letters of consent have been filed with the Clerk of the Court.

in this case. Louisiana's expansive interpretation of the Buck Act and the MLAAL would allow the states to impose taxes on mineral production, or any other activity by federal lessees on acquired federal lands, even where the states had previously ceded the lands to the federal government without reserving taxing jurisdiction.[2] That interpretation is clearly contrary to the intent of Congress.

The legislative history and plain language of the Buck Act indicate that Congress intended the statutory definition of "income tax" to encompass only state taxes that are assessed on "income." The incidence of the tax at issue in this case, which Louisiana itself classifies as a severance tax, is on the severance of minerals from the land, not on the actual receipt

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[2] The subject of jurisdiction over acquired federal lands is complex, because it is dependent on the terms under which particular lands were originally ceded to the federal government. *See generally* Report of the Interdepartmental Committee For The Study Of Jurisdiction Over Federal Areas Within The States, *Jurisdiction Over Federal Areas Within The States*, Part I (1956). For historical reasons, nearly all land acquired by the United States between 1840 and 1940 falls within the exclusive legislative jurisdiction of the federal government. *See id.* at 8-11. Over the years, most states enacted statutes of general applicability authorizing the transfer of lands to the federal government for various purposes. *See, e.g., id.* at Appendix B to Part I. In those statutes, many states ceded virtually exclusive jurisdiction to the federal government, reserving only certain aspects of state jurisdiction, such as service of process. In some states, the right to impose taxes has also been reserved. Attached as Appendix A is a current list of states that have enacted statutes ceding, or authorizing the governor or legislature to cede, exclusive jurisdiction over acquired federal lands without reserving taxing jurisdiction, or reserving taxing jurisdiction only to the extent permitted by federal law. The outcome of this case could have an impact on acquired federal lands in those states. In addition, this case could have an impact on acquired lands in other states that presently reserve taxing jurisdiction, but previously ceded lands to the federal government without reserving such jurisdiction.

of any income, and it therefore is not an "income tax" under the Buck Act.

Louisiana's interpretation of Section 8 of the MLAAL, 30 U.S.C. § 357, is similarly contrary to the intent of Congress. Louisiana interprets Section 8 as an affirmative retrocession of taxing authority. However, that section is merely a savings clause that preserves any rights that Louisiana may have to impose taxes. Because Louisiana did not reserve the right to tax when it ceded jurisdiction over Barksdale Air Force Base to the United States, Louisiana has no rights to preserve under Section 8 of the MLAAL.

The Louisiana decisions attempt to circumvent the prior decision of this Court in *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369 (1964), which held that Louisiana lacked jurisdiction to levy an ad valorem tax on privately owned property located on Barksdale Air Force Base. In addition, the decisions of the Louisiana courts conflict with the decisions of the U.S. Court of Appeals for the Fifth Circuit and the U.S. District Court for the Western District of Louisiana, which have held, in four separate opinions, that Louisiana may not levy a severance tax on oil and gas extracted from the very same federal lands at issue in this case.[3] Louisiana's attempt to circumvent those federal court judgments contravenes the established principles of issue preclusion and comity between state and federal courts.

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[3] *See Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717 (5th Cir. 1969), *cert. denied*, 398 U.S. 957 (1970); *Shell Oil Co. v. Mouton*, 410 F.2d 715 (5th Cir. 1969); *Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968); *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990).

Louisiana's interpretations of the Buck Act and the MLAAL could have an impact on the U.S. Treasury, because they open the door to the imposition of a wide variety of state taxes on virtually any activity by private parties on acquired federal lands. If the decision below is not reversed, other states may adopt Louisiana's expansive views of the Buck Act and MLAAL, and impose their own taxes on mineral production or other activities on acquired federal lands, even where they have previously relinquished exclusive jurisdiction over such lands to the federal government. Because state taxes are generally deductible from income for purposes of calculating federal income taxes, the effect of increasing state taxes could be to reduce federal tax revenues.

Finally, imposition of state severance taxes could decrease the value of mineral leases on acquired federal lands in states that have not reserved the right to impose such taxes. The imposition of a severance tax could result in a substantial additional cost on federal lessees, which would have to be taken into account in the evaluation of the leases. The additional cost of a severance tax could have an impact on how much private parties are willing to pay the federal government for mineral leases on acquired lands in the future, and could result in premature abandonment of mineral production from federal leases, due to the reduced profitability of those leases.

REASONS FOR GRANTING THE PETITION

I. IMPOSITION OF THE LOUISIANA SEVERANCE TAX IS INCONSISTENT WITH THE INTENT OF CONGRESS IN THE BUCK ACT AND THE MLAAL.

In this case, the Louisiana courts have interpreted a federal statute, the Buck Act, 4 U.S.C. §§ 105-110, to allow

the imposition of Louisiana severance taxes on the production of oil from acquired federal lands, because the severance tax is measured by the value, rather than the quantity, of oil production, and allegedly fits within the definition of an "income tax" under the Buck Act. In addition, separate and distinct from their interpretation of the Buck Act, the Louisiana courts held that Congress granted Louisiana the authority to impose severance taxes on both oil and natural gas under the savings clause in Section 8 of the MLAAL, 30 U.S.C. § 357. Louisiana's assertions that the severance tax is an "income tax" under the Buck Act, and that Section 8 of the MLAAL is an affirmative grant of taxing authority to the states, are clearly wrong and contrary to the intent of Congress.

Congress enacted the Buck Act, 4 U.S.C. §§ 105-110, for two specific purposes. First, Congress wanted to provide that federal employees who reside within federal areas would not be exempt from state income taxes. S. Rep. No. 1625, 76th Cong., 3d Sess. 3 (1940). Second, Congress wanted to ensure that a sale or use of tangible personal property that occurs within a federal area would be treated for state tax purposes in the same way as an otherwise identical sale or use that occurs outside the federal area. *Id.* at 2.

It is clear from the examples discussed in the legislative history that when Congress enacted the Buck Act, it had before it only those two very narrow concerns. There is no indication anywhere in the statute or the legislative history that Congress intended to give the states carte blanche to impose any type of tax, on any type of activity, occurring within acquired federal lands. In particular, there is no indication anywhere in the legislative history that Congress intended to allow the levy of a state severance tax on minerals extracted from acquired federal lands.

In this case, Louisiana argues that its severance tax on oil should be considered an income tax for purposes of the

Buck Act. However, the concept of an income tax is well established in tax law, and is premised on the realization of "income," in the form of money, property or services, or the reduction of a debt.[4] The applicable legal concepts are no different in Louisiana, and the Louisiana Revised Statutes contain provisions specifically describing an income tax in those terms.[5] In contrast, severance taxes are premised only on the act of severing minerals from real estate.[6] In Louisiana, the state's severance taxes are set forth in statutory provisions that are in a separate chapter from the provisions concerning income taxes. *See* La. R.S. 47:631.

The Louisiana severance tax is not dependent on the realization of income from the sale of minerals, but merely on

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[4] *See, e.g., Commissioner v. Indianapolis Power & Light Co.*, 493 U.S. 203, 209 (1990) (describing "income" as "'undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion'" (quoting *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955))); *Helvering v. Bruun*, 309 U.S. 461, 469 (1940) ("Gain may occur as a result of exchange of property, payment of the taxpayer's indebtedness, relief from a liability, or other profit realized from the completion of a transaction."); Treas. Regs. § 1.61-1(a) (1957); *see also Galt v. Commissioner*, 216 F.2d 41, 50 (7th Cir. 1954) ("[A]n income tax is imposed upon income at the time of its realization."), *cert. denied*, 348 U.S. 951 (1955); 1 Bittker & Lokken, *Federal Taxation of Income, Estates and Gifts* ¶ 5.2 at 5-17 (2d ed. 1989) (principle that gains are not taxed as income "until they have been 'realized' in some way" is "so basic to the structure of the law that the principle is not challenged").

[5] *See* La. R.S. 47:287.2-.785 (corporation income tax).

[6] *See* Howard R. Williams & Charles J. Meyers, *Manual of Oil and Gas Terms* 1013 (1994); *United Gas Pipe Line Co. v. Whitman*, 390 So. 2d 913, 918 (La. Ct. App. 2d Cir. 1980) (severance tax is excise tax imposed on privilege of severing natural resources from soil), *cert. denied*, 396 So. 2d 928 (La.), *and cert. denied*, 396 So. 2d 929 (La. 1981).

the severance of minerals from the land.[7] The tax is due at the moment of severance, even if there has been no sale, or other exchange for value, of such minerals. *Cocreham*, 382 F.2d at 938 ("the incidence of taxation" is "the severance of minerals from the soil"). As the Fifth Circuit recognized in *Cocreham*, "the Louisiana severance tax is simply not an income tax." *Id.* at 940.

The legislative history of the Buck Act indicates that the statutory definition of "income tax" was intended to encompass state taxes assessed on "income," although they might not be called "income" taxes.[8] However, "it seems apparent that the variations contemplated by the Congress were variations in the *name* or the *form* of the state tax, but not variations in the *substance* of the tax."[9]

Louisiana argues that because it has amended the severance tax on oil to allow for measurement of the tax based on value, the severance tax should be viewed as an "income tax." However, under the Louisiana statute, the severance tax may be levied on oil even if there is *no* sale and there is *no* actual income. If the oil were simply placed in storage, the tax would still be assessed, based on the "posted field price." La. R.S. 47:633(7). That result would be like imposing an income

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[7] *See* La. R.S. 47:631 ("Taxes . . . are hereby levied upon all natural resources severed from the soil or water . . . ."); *Cocreham*, 382 F.2d at 940 ("The Louisiana severance tax is 'levied upon all natural resources severed from the soil * * * including * * * minerals such as oil [and] gas * * *,' LSA-R.S. 47:631 . . . .").

[8] S. Rep. No. 1625, 76th Cong., 3d Sess. 5 (1940) (noting Committee's intent to "include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or by any other name) if it is levied on, with respect to, or measured by, net income, gross income, or gross receipts").

[9] *United States v. City & County of Denver*, 573 F. Supp. 686, 691 (D. Colo. 1983) (emphasis added).

tax on the value of the inventory of a manufacturing concern, on the theory that the inventory will be sold someday, resulting in income.[10] The flaw in Louisiana's argument is that it ignores the concept of realization, and thus is contrary to one of the basic premises underlying an income tax.[11] No matter how it is measured, the event that triggers the liability for the severance tax is severance from the land, not the receipt of income. Therefore, because the Louisiana severance tax on oil may be imposed even where there has been no receipt of income, and because the "incidence of taxation" is the "severance of minerals from the soil," it is not an "income tax" for purposes of the Buck Act. *Cocreham*, 382 F.2d at 938.

The effect of a severance tax on minerals produced from federal lands is substantially different from the situations Congress was attempting to address in the Buck Act. The federal government has no property interest in the salaries of federal employees or sales of personal property that occur in federal areas. In contrast, the severance taxes at issue in this case could affect the value of minerals that are owned by the federal government. *See* Part IV, *infra*. In 4 U.S.C. § 107(a), Congress expressly prohibited "the levy or collection of any tax on or from the United States." As explained in Part IV, if the severance tax is applicable, the effect may be to decrease the amount private parties are willing to pay for mineral leases on acquired federal lands, thus effectively imposing the burden of the tax on the United States. The tax is therefore inconsistent

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[10] *Cf. Indianapolis Power & Light*, 493 U.S. at 210 ("Any income that the utility may earn through use of the deposit money of course is taxable, but the prospect that income will be generated provides no ground for taxing the principal.").

[11] *See, e.g., Anson v. Commissioner*, 328 F.2d 703, 705 (10th Cir. 1964) ("Tax is not imposed upon what income should be but upon what income actually is.").

with the express direction from Congress in Section 107 of the Buck Act.[12]

Finally, in the Buck Act, Congress was responding to the complaints of the states that some federal employees and some sales transactions on federal lands were escaping state taxation completely. In contrast, in this case, Petitioners have *already paid*, and continue to pay, Louisiana *income* taxes, under the *income* tax provisions set forth in La. R.S. 47:287.2-.785, on the income derived from the oil produced from Barksdale, after the eventual sale of the oil, when the income is realized. Contrary to the intent of Congress, Louisiana is attempting to impose its severance tax in addition to the state income tax. Unlike the limited situations Congress intended to address in the Buck Act, the transactions at issue in this case do not escape state taxation, because they are subject to the "real" Louisiana income tax at the time of the actual receipt of income. That limited grant of taxing jurisdiction is all that Congress intended to authorize in the Buck Act.

Significantly, it is clear that even under Louisiana's theory, the Louisiana severance tax on *natural gas* cannot be an "income tax" under the Buck Act, because the tax on natural gas is measured by quantity, not value. La. R.S. 47:633(9). Louisiana has attempted to circumvent that problem by arguing that the savings clause in Section 8 of the MLAAL, 30 U.S.C. § 357, affirmatively grants jurisdiction to the states, separate and distinct from the Buck Act, to impose state taxes on minerals produced from acquired federal lands, even in instances where the state has not previously reserved

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[12] *See, e.g., United States v. State Tax Comm'n*, 421 U.S. 599, 604-05 (1975) ("The exception in § 107(a) is plainly a congressional preservation of federal immunity from any state tax that would violate the principle of McCulloch v. Maryland, *supra*, prohibiting state taxation of instrumentalities of the United States.").

taxing jurisdiction. Section 8 of the MLAAL, however, is not an affirmative grant of taxing power to the states, as Louisiana has asserted, but is simply a savings clause. Section 8 provides:

> Nothing in this chapter shall be construed or held to affect the rights of the States . . . to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

30 U.S.C. § 357.

Under the plain language of the statute, Congress did not grant the states any new taxing power in the MLAAL, but simply preserved any existing rights that they may have. If a state has reserved taxing jurisdiction at the time of ceding land to the federal government, Section 8 preserves that jurisdiction. However, if a state has ceded land to the federal government without reserving jurisdiction to tax, Section 8 does not give back that jurisdiction. The law is clear that a retrocession of jurisdiction must be explicit.[13]

Under Louisiana's interpretation, the types of taxes that could be imposed on acquired federal lands by the states would not be limited to income and sales taxes, as they are under the Buck Act. The language of the savings clause extends to any state tax on the "rights, property or assets of any lessee of the United States." 30 U.S.C. § 357. Thus, with respect to acquired federal lands where the states have previously retained *no* taxing jurisdiction, the states would suddenly gain the

---

[13] *See Humble*, 376 U.S. at 374; *Hancock v. Train*, 426 U.S. 167, 179 (1976); *Lord v. Local Union No. 2088, Int'l Bhd. of Elec. Workers*, 646 F.2d 1057, 1062-63 (5th Cir. Unit B), *reh'g denied*, 654 F.2d 723 (5th Cir. 1981), *and cert. denied*, 458 U.S. 1106 (1982).

power to impose taxes on "rights, property or assets" of federal lessees. Louisiana's interpretation of the MLAAL cannot be correct, because it is contrary to this Court's decision in *Humble*, which held that Louisiana lacked jurisdiction to levy an ad valorem tax on property owned by federal lessees on Barksdale Air Force Base. 376 U.S. at 371-74.

II. THE LOUISIANA DEPARTMENT HAS ATTEMPTED TO CIRCUMVENT THE DECISIONS OF THE FEDERAL COURTS.

The underlying issues presented by this case are not new. Litigation over essentially the same issues has been in progress in the state and federal courts in a succession of cases over the past 30 years, since this Court's decision in *Humble*. Not surprisingly, the Louisiana state courts have consistently sided with the Louisiana Department of Revenue and Taxation. However, every federal court that has ruled on the issues since *Humble* has held against the state.

First, the actions of Louisiana, upheld by the Louisiana courts, are a clear attempt to circumvent the decision of this Court in *Humble*. In *Humble*, the Court struck down Louisiana's attempt to levy an ad valorem tax, and explained that "[w]hen Congress wished to allow a State to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. §§ 104-110." 376 U.S. at 374. Thereafter, Louisiana amended its severance tax on oil to provide for measurement by value, rather than quantity, changing the appearance of the tax without changing its substance, in an attempt to circumvent *Humble*.

Louisiana has also attempted to circumvent three prior decisions of the U.S. Court of Appeals for the Fifth Circuit, which held that Louisiana has no right to impose severance

taxes on oil and gas produced under federal leases from Barksdale Air Force Base.[14] In *Cocreham*, the Fifth Circuit explained that the "Louisiana severance tax is 'levied upon all natural resources severed from the soil * * * including * * * minerals such as oil [and] gas * * *,' LSA-R.S. 47:631, and is measured by the quantity of minerals severed, LSA-R.S. 47:633," and therefore, "is simply not an income tax." 382 F.2d at 940.[15] After *Cocreham*, Louisiana did not change the statutory provision describing the event triggering the severance tax, the severance of minerals from the soil. *Compare Cocreham*, 382 F.2d at 940 *with* La. R.S. 47:631. Rather, Louisiana attempted to circumvent the Fifth Circuit's decisions by simply changing the unit of measurement of the severance tax on oil (but not gas) from quantity to value.

Finally, prior to the entry of the final judgment in this case in the state trial court, and prior to any of the proceedings in this case in the Louisiana Court of Appeal or the Louisiana Supreme Court, the U.S. District Court for the Western District of Louisiana entered judgment against the Louisiana Department of Revenue and Taxation in *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990) (Pet. App. F at 33a). *Tarver* involved the same federal enclave, and *exactly the same*

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[14] *Sinclair*, 410 F.2d 717; *Shell*, 410 F.2d 715 (5th Cir. 1969); *Cocreham*, 382 F.2d 929.

[15] In *Sinclair* and *Shell*, the Fifth Circuit held that its decision in *Cocreham* addressed, and clearly disposed of, all of the contentions raised by Louisiana in *Sinclair* and *Shell*. *Sinclair*, 410 F.2d at 718; *Shell* 410 F.2d at 716.

legal issues posed in this case. The Louisiana Department did not appeal *Tarver*, and it became final and binding with regard to the issues of federal law litigated therein.[16] Notwithstanding that fact, all of the Louisiana courts completely ignored *Tarver* in their decisions.

Louisiana argues that the Buck Act allows it to circumvent the Supreme Court's decision in *Humble* merely by changing the way the severance tax is measured. In *Tarver*, the U.S. District Court for the Western District of Louisiana rejected that argument, stating:

> The court cannot believe that the change in the method for calculation of the amount of the tax on the oil severed from a quantity-based tax to

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[16] *Heck v. Humphrey*, ___U.S. ___, 114 S. Ct. 2364, 2373 n.9 (1994) ("State courts are bound to apply federal rules in determining the preclusive effect of federal-court decisions on issues of federal law."); *Stoll v. Gottlieb*, 305 U.S. 165, 170 ("[W]here the judgment or decree of the Federal court determines a right under a Federal statute, that decision is 'final until reversed in appellate court, or modified or set aside in the court of its rendition.'" (quoting *Deposit Bank v. Board of Councilmen*, 191 U.S. 499, 520 (1903)), *reh'g denied*, 305 U.S. 675 (1938)). *Accord Nutter v. Monongahela Power Co.*, 4 F.3d 319, 321 (4th Cir. 1993) ("Federal law determines the preclusive effect of federal orders on a question of federal law, regardless of whether the court applying the federal judgment is state or federal."); *Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 41 (2d Cir. 1986) ("A state court must apply federal law to determine the preclusive effect of a prior federal question judgment."), *cert. denied*, 480 U.S. 948 (1987), *and cert. denied*, 502 U.S. 1005 (1991); *Seven Elves, Inc. v. Eskenazi*, 704 F.2d 241, 244 n.2 (5th Cir. 1983) ("[S]tate courts generally are required to follow federal rules in deciding the preclusive effect of a prior federal question judgment of a federal court."); *Reeder v. Succession of Palmer*, 623 So. 2d 1268, 1271 (La. 1993) ("When a state court is required to determine the preclusive effects of a judgment rendered by a federal court exercising federal question jurisdiction, it is the federal law of res judicata that must be applied."), *cert. denied*, __ U.S. __, 114 S. Ct. 1191 (1994); *see also* Restatement (Second) of Judgments § 87 (1980) ("Federal law determines the effects under the rules of res judicata of a judgment of a federal court.").

> a value-based tax alters the . . . conclusion that the tax is not an income tax. This seems clear, as the severance tax at issue is not levied upon any particular taxpayer, but rather upon the natural resources themselves.

Tarver, Civ. No. 90-0043 (Pet. App. at 49a).

The Louisiana courts are not free to disregard the decisions of the federal courts. As this Court explained in *Deposit Bank v. Board of Councilmen*, 191 U.S. 499 (1903), regarding the obligation of a state court to give effect to a prior federal court decision, "[a]ny other conclusion strikes down the very foundation of the doctrine of *res judicata*, and permits the state court to deprive a party of the benefit of its most important principle, and is a virtual abandonment of the final power of the Federal courts to protect all who come before them relying upon rights guaranteed by the Federal Constitution, and established by the judgments of the Federal courts." 191 U.S. at 520.[17]

III. LOUISIANA'S INTERPRETATIONS OF THE BUCK ACT AND THE MLAAL COULD PRODUCE AN UNANTICIPATED DECREASE IN FEDERAL TAX REVENUE.

Louisiana's interpretations of the federal statutes at issue in this case open the door to the imposition of state taxes on virtually any activity by federal lessees on acquired federal lands, in instances in which the states have not previously

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[17] *Accord Williams Natural Gas Co. v. Oklahoma City*, 890 F.2d 255, 265 n.11 (10th Cir. 1989) ("The requirement that federal court judgments command at least the central core of res judicata effects in state courts is 'indispensable to federalism.'" (quoting 18 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4468 at 648-49 (1981))), *cert. denied*, 497 U.S. 1003 (1990).

reserved taxing jurisdiction. As explained in Part I, *supra*, under the guise of the Buck Act, states could impose any type of tax on minerals, as long as the tax is value-based. Under the savings clause in the MLAAL, states could impose any type of tax on "rights, property or other assets" of federal lessees, without limitation. *See* 30 U.S.C. § 357. Louisiana's interpretations of the Buck Act and MLAAL are not limited to Barksdale Air Force Base. By its terms, the Buck Act is applicable to all "Federal areas" within the boundaries of a state. 4 U.S.C. § 110(e). Similarly, the MLAAL is applicable to all acquired federal lands. *See* 30 U.S.C. § 352.

If the Louisiana decisions are not reversed, other states may adopt Louisiana's expansive interpretations of the Buck Act and the MLAAL and impose their own state taxes on minerals produced from acquired federal lands, as well as other activities on federal lands, even if they did not reserve the right to impose state taxes at the time of ceding the land to the federal government. Because state taxes are generally deductible from federal income tax, the imposition of the severance tax or other state taxes by Louisiana and other states could have an unanticipated impact on federal tax revenues.

Under Section 164 of the Internal Revenue Code, a taxpayer may take a deduction on its federal income tax return for the amount of state income and other state taxes it has paid. 26 U.S.C. § 164. Deductions for state taxes reduce the taxpayer's federal taxable income and, therefore, reduce the amount of federal income taxes owed to the U.S. Treasury. 26 U.S.C. § 63. Because the effects of Louisiana's erroneous interpretations of the federal statutes are not limited to this particular case, or to Barksdale Air Force Base, but reach all lessees on acquired federal lands, the impact on federal tax revenues could be significant over time. The legislative history of the Buck Act makes it clear that Congress did not anticipate that situation.

IV. IMPOSITION OF STATE SEVERANCE TAXES COULD DECREASE THE VALUE OF MINERAL LEASES ON FEDERAL LANDS.

Under the terms of mineral leases issued by the Department of Interior, lessees are generally liable for any state taxes lawfully assessed on the minerals produced from the lease. Until the decisions of the Louisiana courts in this case, however, bidders on federal leases on acquired lands where states had not reserved taxing jurisdiction would not anticipate paying severance taxes, because severance taxes were not permitted under the Buck Act.

The Louisiana severance tax on oil is 12.5% of the value of oil severed from the land. La. R.S. 47:633(7). Payment of the severance tax is a substantial additional cost, which decreases the rate of return on the oil produced from federal lands. Although the amount of severance taxes paid to Louisiana is deductible from federal income taxes, the cost of the severance tax is not eliminated, but is reduced by the product of the federal corporate income tax rate times the amount of state taxes paid. Assuming an applicable marginal corporate income tax rate of 35%, the federal tax deduction would offset only a little more than one third of the expense of paying state severance taxes. Thus, for example, if leases were being negotiated on tracts within Barksdale Air Force Base today, the net additional cost of the severance tax would be roughly 8% of the value of the oil produced. That additional cost would have to be taken into account in the evaluation of the leases.[18]

If a severance tax may be imposed on oil and gas production on acquired federal lands, it could also be imposed

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[18] With respect to natural gas production, the Louisiana severance tax of $.07 per Mcf would have a similar effect.

on all other mineral production. On acquired federal lands in states that have not previously reserved the right to impose such taxes, the added cost of a severance tax could have an impact on how much private parties are willing to pay the federal government for mineral leases in the future. It could also affect the economic analysis used in determining when an oil or gas well, or other mineral deposit, has reached the end of its economic life and should be abandoned, resulting in abandonment of resources sooner than would otherwise be the case. Premature abandonment would result in a further loss of revenues to the United States, in addition to an avoidable loss of domestic energy resources.

CONCLUSION

API supports the granting of a writ of certiorari to correct the erroneous decisions of the Louisiana courts below.

Respectfully submitted,

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September 15, 1995

APPENDIX A

Alaska	Act of July 7, 1958, Pub. L. No. 85-508, § 10, 1958 U.S.C.C.A.N. (72 Stat. 339) 392, 400-02 (set forth in 48 U.S.C.A. as note preceding § 21) (national defense withdrawals); *id.* at § 11(b), 1958 U.S.C.C.A.N. at 402-03 (enclaves, including Naval Petroleum Reserve No. 4).
Arizona	Ariz. Rev. Stat. Ann. § 26-252 (1993).
Colorado	Colo. Rev. Stat. § 3-1-103 (1980).
Connecticut	Conn. Gen. Stat. Ann. § 48-1 (West 1994).
Delaware	Del. Code Ann. tit. 29, § 103 (1991) (authorizing governor to cede jurisdiction).
Florida	Fla. Stat. Ann. § 6.04 (West 1988) (authorizing governor to cede exclusive jurisdiction).
Hawaii	Act of March 18, 1959, Pub. L. No. 86-3, § 16(b), 1959 U.S.C.C.A.N. (73 Stat. 4) 5, 13-14 (set forth in 48 U.S.C.A. as note preceding § 491) (enclaves).
Idaho	Idaho Code §§ 58-701 (military lands), 58-702 (enclaves) (1994).

Indiana	Ind. Code Ann. § 4-20.5-14-3 (Burns 1990) (reserves only income tax consistent with Buck Act).
Kentucky	Ky. Rev. Stat. Ann. § 3.090 (Michie 1992) (General Assembly will consider case by case).
Maryland	Md. Code Ann., State Gov't § 14-102 (1993) (reservation of jurisdiction only to extent permitted by U.S. Constitution).
Massachusetts	Mass. Gen. Laws Ann. ch. 1, § 7 (West 1986).
Missouri	Mo. Ann. Stat. § 12.020 (Vernon 1969).
Nebraska	Neb. Rev. Stat. §§ 72-601 to 72-606 (1990) (repealed) (no current general statute).
New Hampshire	N.H. Rev. Stat. Ann. § 123:1 (1990).
New Jersey	N.J. Stat. Ann. § 52:30-2 (West 1986).
New York	N.Y. State Law § 52 (McKinney 1984) (authorizing governor to cede exclusive jurisdiction).
North Carolina	N.C. Gen. Stat. § 104-7 (1985).
North Dakota	N.D. Cent. Code § 54-01-08 (1989).

Ohio	Ohio Rev. Code Ann. § 159.04 (Anderson 1994).
Oklahoma	Okla. Stat. Ann. tit. 80, § 2 (West 1995).
Oregon	Or. Rev. Stat. § 272.030 (1993).
Rhode Island	R.I. Gen. Laws § 42-1-2 (1993).
South Carolina	S.C. Code Ann. §§ 3-1-10 (public purposes), 3-1-120 (enclaves) (Law. Co-op. 1986 & Supp. 1994).
South Dakota	S.D. Codified Laws Ann. § 1-1-2 (1992).
Vermont	Vt. Stat. Ann. tit. 1, § 552 (1985).
Wisconsin	Wis. Stat. Ann. § 1.02 (West 1986 & Supp. 1994).
Wyoming	Wyo. Stat. Ann. § 36-10-102 (1977).

(4)

No. 95-286

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION & PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

v.

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

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RULE 29.1 STATEMENT

Pursuant to Supreme Court Rule 29.1, Petitioners refer the Court to pp. ii-iii of their Petition for a Writ of Certiorari for a list of parties and of all parent companies and subsidiaries (other than wholly-owned subsidiaries) of each party which is a corporation.

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INTRODUCTION

Petitioners set out in their Petition how the opinion of the Louisiana Court of Appeal fundamentally conflicts with this Court's decision in *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369 (1964) ("*Humble*") and the subsequent decisions of the federal courts consistently applying that decision to the Barksdale enclave. Respondent's Brief in Opposition ("Respondent's Brief") contradicts this Court's opinion in *Humble* by setting out a theory that even the Louisiana Court of Appeal did not have the temerity to adopt, *i.e.*, that Louisiana did not cede exclusive legislative jurisdiction over Barksdale. Then, having attempted to avoid this Court's decision in *Humble*, Respondent argues that the decision of another state supreme court on that state's occupation tax somehow serves to overrule *Humble* and the other, consistent federal court decisions applying *Humble* to Louisiana's repeated attempts to apply its severance tax to production from leases within the Barksdale enclave.

Respondent's Brief only underscores the need for this Court to grant the Petition.

A. Respondent Fails To Address Petitioners' Reasons For Granting The Petition.

Respondent's Brief, primarily a historical piece, not only fails to refute the significance of this case, but also fails to address many of Petitioners' arguments and avoids discussing altogether most of the pertinent issues and legal authorities. Petitioners suggest in their Petition that this Court should grant the application because:

1) The Louisiana Court of Appeal's decision conflicts with *Humble*;
2) That decision conflicts with *Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th Cir. 1967), *reh'd denied*, 390 F.2d 54 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968) ("*Cocreham*") and with *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990) ("*Tarver*"), both holding that the

Louisiana severance tax is not a Buck Act income tax; and

3) There has been no retrocession by Congress to the State of Louisiana of the jurisdictional power to impose severance taxes within the confines of Barksdale.

Indeed, that this Court's decision in *Humble* is even implicated by, much less conflicts with, the Louisiana opinion in this case is difficult to discern from Respondent's Brief.

Not content to merely brush off this Court's jurisprudence, however, Respondent devotes a multi-colored, pull-out exhibit in its Appendix (Resp. App. at C-10) and a prominent place in its Brief (pp. 6-7) to an argument which not even the Louisiana courts have adopted and which is contrary to this Court's holding in *Humble*. Specifically, Respondent asserts that Louisiana's cession of Barksdale to the United States was not pursuant to the Louisiana cession statute, 1892 La. Acts No. 12, but rather to other Louisiana laws which make no mention of either exclusive federal jurisdiction or the reservation of rights to the State. Respondent implies that in the absence of such a reservation, the State is free to tax anything of value on Barksdale.

In *Humble*, this Court expressly relied on the very Louisiana cession statute Respondent now argues is inapplicable in holding that the United States had exclusive jurisdiction over Barksdale pursuant to the Supremacy Clause and that consequently, absent a specific reservation of the power to tax in its cession, Louisiana lacked jurisdiction to levy an ad valorem tax on property of a private oil and gas lessee on Barksdale:

> When the State and its agencies gave the land to the United States, Louisiana law provided that the United States should have "the right of exclusive jurisdiction" over any land it "purchased or condemned, or otherwise acquired . . . for all purposes, except the administration of the criminal laws . . . and the services of civil process of said State therein. . . . "

Humble, 376 U.S. at 371 & n.3 (citing 1892 La. Acts No. 12). Moreover, Respondent's assertion that 1892 La. Acts No. 12 does not govern Louisiana's cession of the Barksdale lands is truly remarkable given the fact that in its brief on the merits in *Humble*, Louisiana not only expressly conceded the applicability of the statute to Barksdale, but also acknowledged that Louisiana's legislative consent to the cession guaranteed "as to the lands donated exemption from all taxation, assessments and charges levied under authority of the State." *See* Brief of Respondent on the Merits at 10, 19, *Humble* (No. 329) ("[T]he consent of the State of Louisiana to the donations, as contained in Act No. 12 of 1892, and as later amended by Act No. 31 of 1942 (embodied in the Louisiana Revised Statutes of 1950 as Title 52 § 1) ceded pursuant to its provisions exclusive legislative jurisdiction to the Federal Government over the lands so acquired.").

Finally, even if, in spite of this Court's holding in *Humble* and Louisiana's concession in that case to the contrary, the state constitutional amendments and statutes upon which Respondent relies were somehow pertinent, they contain neither an express limitation on federal jurisdiction nor an express reservation by Louisiana of the power to tax, one of which is necessary for the state to retain jurisdiction to tax. *See Lord v. Local Union No. 2088, Int'l Brotherhood of Elec. Workers, AFL-CIO*, 646 F.2d 1057, 1059 (5th Cir. Unit B 1981), *cert. denied*, 458 U.S. 1106 (1982) ("The jurisdiction exercised by the United States over federal enclaves is exclusive *unless the deed of cession provides to the contrary* or unless the cession is not accepted in the manner required by law.") (emphasis supplied).[1]

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[1] Respondent also implies that Section 2(k) of the leases in question retroceded the power to tax to the State of Louisiana. (Resp. Brief at 11) As in its discussion of the cession statute, Respondent ignores the fact that this issue was also resolved by this Court in *Humble*. 376 U.S. at 374. Similarly, as stated by the Court in *Humble*, the "fact that the oil and gas leases were issued by the Department of the Interior rather than the Department of the Air Force does not affect the exclusive jurisdiction of the United States." *Id.* at 373 n.4.

Other federal cases following *Humble* and applying the Supremacy Clause hold that Louisiana lacks jurisdiction to tax Barksdale property, including specifically the imposition of severance taxes. In *Cocreham*, the Fifth Circuit clearly followed *Humble* and applied the Supremacy Clause, holding:

> The argument that in its sovereign capacity Louisiana has the power to impose a tax on the severance of oil and gas in a federal enclave collides with the Supremacy Clause. As *Humble* holds, a State may not legislate for a federal enclave within the exclusive legislative jurisdiction of Congress.

382 F.2d 929, *reh'g denied*, 390 F.2d 34, 36.[2]

In view of the reliance on the Buck Act by both the Louisiana courts and Respondent, perhaps the most glaring omission from Respondent's Brief, however, is the complete absence of any reference to or explanation of *Tarver*, the federal district court decision rendered before the Louisiana Court of Appeal decision in this case, which resolved negatively the same federal question the Louisiana Court of Appeal decided affirmatively – whether the amended Louisiana severance tax was an "income tax" under the Buck Act.[3] The Louisiana Court of Appeal decision thus creates a clear conflict with the federal district court decision in *Tarver*, with the result that production from a tract contiguous to several of those at issue here has been held not to be subject to Louisiana severance taxation while production from Petitioners' tracts is subject to the tax.

Louisiana chose not to appeal its loss in *Tarver*, and the reason for this is evident: because the district court's decision

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[2] *Cocreham* was followed in two subsequent Fifth Circuit cases involving the Barksdale enclave as well as by the federal district court in *Tarver*. *See Shell Oil Co. v. Mouton*, 410 F.2d 715 (5th Cir. 1969); *Mouton v. Sinclair Oil & Gas Co.*, 410 F.2d 717 (5th Cir. 1969), *cert. denied*, 398 U.S. 957 (1970).

[3] As the Louisiana Court of Appeal recognized, whether a state tax meets the definition of an income tax under the Buck Act is a question of federal law. 648 So. 2d at 1112 n.4; *Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624, 628-29 (1953); *United States v. Lewisburg Area Sch. Dist.*, 539 F.2d 301, 310 (3d Cir. 1976).

was fully consistent with the Fifth Circuit's decisions in *Cocreham* and later cases, it undoubtedly would have been affirmed. Had *Tarver* been affirmed, moreover, certiorari in this case plainly would have been indicated pursuant to Supreme Court Rule 10.1(c). Louisiana's expedient failure to appeal *Tarver* should not be permitted to change that result. Failure to appeal simply means that, by Louisiana's own choosing, the district court's decision stands as the last word of the federal courts; the conflict between the federal and state courts, and the resulting anomalous disparity of treatment of contiguous Barksdale tracts, remain. Only this Court can correct the error below, resolve the conflict, and restabilize the once settled law in this area.

B. The Louisiana Severance Tax Is Not An Income Tax Under The Buck Act.

In arguing that Congress specifically retroceded to Louisiana the power to levy its severance tax under the Buck Act, Respondent continues its approach of avoiding any meaningful discussion of the federal decisions directly on point to this case. For example, Respondent's only reference to the Fifth Circuit's opinion in *Cocreham*, which held that the Buck Act did not authorize a previous attempt by Louisiana to impose the same severance tax on production pursuant to one of the same leases involved here, appears in a lengthy quoted passage from the Louisiana Court of Appeal's opinion below. (Resp. Brief at 26) Similarly, as noted above, Respondent never even mentions, much less distinguishes, the federal district court's recent opinion in *Tarver*, which applied the holdings of *Humble* and *Cocreham* to invalidate yet another attempt by Louisiana to impose its severance tax on production from an adjacent, but identical, Barksdale lease and concluded that the amendment to the Louisiana severance tax statute, changing the tax from volume-based to value-based, did not suddenly render it an income tax under the Buck Act. (Pet. App. F at 49a-50a) Respondent's studied avoidance of these cases – cases which dealt with leases on the same federal enclave and invalidated the same Louisiana severance

tax at issue here – reflects its inability to sufficiently distinguish them.

Instead of addressing the only relevant authority, Respondent chooses to rely on the bald assertion that the "Buck Act is applicable to any tax based upon value." (Resp. Brief at 22) This proposition directly conflicts with this Court's holding in *Humble* that Louisiana's imposition of an ad valorem tax on property owned by lessees of mineral rights on the Barksdale enclave – by its very definition a tax assessed on value – violated the Supremacy Clause of the United States Constitution. 376 U.S. at 374.

Moreover, Respondent's definition of an income tax – any tax based on value – completely ignores and clashes with the explicit definition provided by the Buck Act itself: "The term 'income tax' means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." 4 U.S.C. § 110(c). However, even operating under the incredible assumption that a tax on value is per se a tax on income under the Act, Respondent makes no attempt to explain how the Act retrocedes the power to levy the Louisiana severance tax *on natural gas*, recognizing that the tax on gas had not been amended since the *Cocreham* decision and remains based on volume rather than value.

Respondent attempts to rely on this Court's opinion in *Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624 (1953), to suggest that the Buck Act is so broad as to encompass almost "any tax." (Resp. Brief at 22) *Howard* provides no support for this proposition, however, as it held that a Kentucky occupation tax that was clearly assessed on *earnings* fell within the Buck Act. 344 U.S. at 629 (holding that under the Buck Act, "Kentucky was free to tax earnings just as if the Federal Government were not there"). Rather, *Howard* supports the contention in the Petition that the Buck Act was intended to cover taxes on taxpayers and their earnings and wages, not taxes on property. (*See* Pet. at 20-22)[4]

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[4] Legislative history reflects that Congress purposely provided a specific definition of income tax that was independent of any labels given such taxes by the

In another of its efforts to distract attention from the several directly relevant federal decisions which contradict its view, Respondent cites as support an opinion by the supreme court of another state interpreting that state's own occupation tax. *See Humble Oil & Ref. Co. v. Calvert*, 478 S.W.2d 926 (Tex.), *cert. denied*, 409 U.S. 967 (1972). Certainly, the opinion of another state's supreme court interpreting that state's occupation tax cannot serve to overrule either this Court's opinion in *Humble* as to the limits on Louisiana's taxing jurisdiction over the Barksdale enclave or the subsequent opinions of the federal courts finding that Louisiana's state severance tax does *not* fall within the Buck Act retrocession.

Moreover, the *Calvert* court was concerned not with a severance tax but with an occupation tax on the business of producing oil and gas. The Texas Supreme Court relied on *Howard* for the proposition, inapplicable here, that "[a]n occupation tax, if measured by receipts or income, is an income tax within the meaning of the Buck Act." 478 S.W.2d at 930.[5] In any event, as Respondent concedes that the question of whether a tax is an income tax under the Buck Act is a question of federal law.

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state legislatures enacting them. S. Rep. No. 1625, 76th Cong., 3d Sess. 5 (1940). "[T]he variations contemplated by the Congress were variations in the name or the form of the state tax, but not variations in the substance of the tax." *United States v. City & County of Denver*, 573 F. Supp. 686, 691 (D. Colo. 1983).

[5] Respondent and the Louisiana Court of Appeal mainly rely on the opinion of the Texas Court of Appeals in that case. 648 So. 2d at 1113. (Resp. Brief at 23-24, 29-30) Although affirming the opinion of the Texas Court of Appeals, the Texas Supreme Court did not adopt its reasoning. *Humble Oil & Ref. Co. v. Calvert*, 464 S.W.2d 170, 175-76 (Tex. Civ. App. – Austin 1971), *aff'd*, 478 S.W.2d 926 (Tex.), *cert. denied*, 409 U.S. 967 (1972).

The district court in *Tarver* found the reasoning of the Texas Court of Appeals – a tax is an "income tax" if it is meant to produce revenue for the state – equally unconvincing when presented with that argument by the State of Louisiana as a basis for finding the Louisiana severance tax fell within the scope of the Buck Act retrocession. As stated by the *Tarver* court "under the Texas Court [of Appeal's] decision, every tax is an 'income tax' within the meaning of the Buck Act." (*Tarver*, Pet. App. F at 50a n.20)

C. The Amendments To The Mineral Leasing Act For Acquired Lands Do Not Cede Taxing Authority To Louisiana.

Never directly addressing Petitioners' arguments in the Petition that the Mineral Leasing Act for Acquired Lands ("MLAAL") does not contain an express retrocession of taxing authority, Respondent merely reasserts its position that when Congress amended the MLAAL in 1976 to eliminate the exclusion of military lands from the Act, Louisiana became empowered to tax Barksdale property. The cornerstone of Respondent's MLAAL argument is that the savings clause in Section 8 of the MLAAL (30 U.S.C. § 357), which preserves the states' rights to levy lawful taxes on federal lands leased pursuant to the Act, is similar to that contained in Section 32 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. § 189) ("the 1920 Act"). Respondent asserts that because the savings clause in the 1920 Act allows state taxation on federal lands, Louisiana is allowed to tax Barksdale under the MLAAL, since certain military lands may now be leased under the MLAAL.

In order to make the similarities between the two provisions (30 U.S.C. § 189 and § 357) have any relevance here, Respondent must ignore two critical factors. The first factor Respondent ignores is that when Louisiana ceded Barksdale to the United States without reserving the power to tax Barksdale property, it lost its power to tax, and the lands became a federal enclave subject to exclusive federal legislative jurisdiction. As this Court held in *Humble*, absent a reservation by the state of a right to tax in the cession of land and jurisdiction to the federal government, or a specific retrocession of jurisdiction in an act of Congress, a state lacks power to tax property within an area of exclusive federal jurisdiction. *Humble*, 376 U.S. at 374.

In its attempt to sidestep this issue, Respondent quotes extensively from this Court's decisions in *Mid-Northern Oil Co. v. Walker*, 268 U.S. 45 (1925), and *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981) (Resp. Brief at 16-18), interpreting Section 32 of the 1920 Act (30 U.S.C. § 189) as preserving the states' rights to assess lawful taxes on lands leased by the federal government. Neither *Mid-Northern* nor *Commonwealth*, however, involve federal enclaves; the lands involved in those cases were domain lands owned by the government in its proprietary capacity and had not been ceded to the United States pursuant to Article I, Section 8, Clause 17 of the United States Constitution as Barksdale was. As to enclave lands, the law is clear that any state taxation on an enclave, not done pursuant to a right acquired by reservation or retrocession, would violate the Supremacy Clause and would not be a "lawful" tax as contemplated by *Mid-Northern* and *Commonwealth*.

The second critical factor Respondent ignores is the express language of the MLAAL itself that the only taxing right saved by Section 8 is "with respect to properties covered by leases issued under this Act." The leases in question here were not issued under the MLAAL, but rather predated the enactment of the MLAAL and were issued pursuant to Public Land Orders No. 701 and 2178. Thus, Section 8 has no application to this case.

As Petitioners discussed at length in the Petition, the Louisiana Court of Appeal's conclusion that the 1976 amendment to the MLAAL somehow "strengthened" Louisiana's right to impose severance taxes on Barksdale should be rejected, as it was by the *Tarver* federal court in striking down as unlawful Louisiana's attempt to tax minerals severed within Barksdale. (Pet. App. F at 21) Absent an explicit retrocession of taxing power to the State of Louisiana, which no court has held to have occurred with the passage of either the 1920 Act or the MLAAL, Louisiana, having ceded its taxing authority to the United States, is without authority to levy the severance tax in this case. *See Cocreham*, 382 F.2d at 938 (stating that this Court's decision in *Humble* "rested . . . on the general principle that a state lacks authority

to levy any tax in an area under the exclusive jurisdiction of the United States").

D. Respondent's Brief Demonstrates The Need For This Court's Review.

Petitioners have demonstrated that the Louisiana Court of Appeal's decision is in conflict with and unsettles the law established by this Court in *Humble* and other federal courts, and sanctions Louisiana's most recent attempt in its forty year quest to usurp federal enclave jurisdiction over Barksdale Air Force Base in contravention of the Supremacy Clause. The decision below creates an unseemly anomaly, where the production of two contiguous tracts within the Barksdale enclave under identical leases are subject to two disparate results – the production from one tract being not subject to state severance tax, pursuant to a decision of the federal district court in *Tarver*, applying consistent federal precedent, including this Court's decision in *Humble*; the production from the other tracts being subject to state severance tax, pursuant to the Louisiana Court of Appeal decision at issue here. Only this Court can eliminate this inconsistency and enforce its mandate, ending Louisiana's disregard of this Court's decision and the Supremacy Clause. As demonstrated by Respondent's Brief, such defiance will continue until this Court acts to stop it.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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